SUPREME COURT OF THE UNITED STATES.

No. ~~174.~~ 100.

ORAMEL S. HOUGH, CHARLES J. KERSHAW, AND CHARLES H. SEVERNS, APPELLANTS.

vs.

THE WESTERN TRANSPORTATION COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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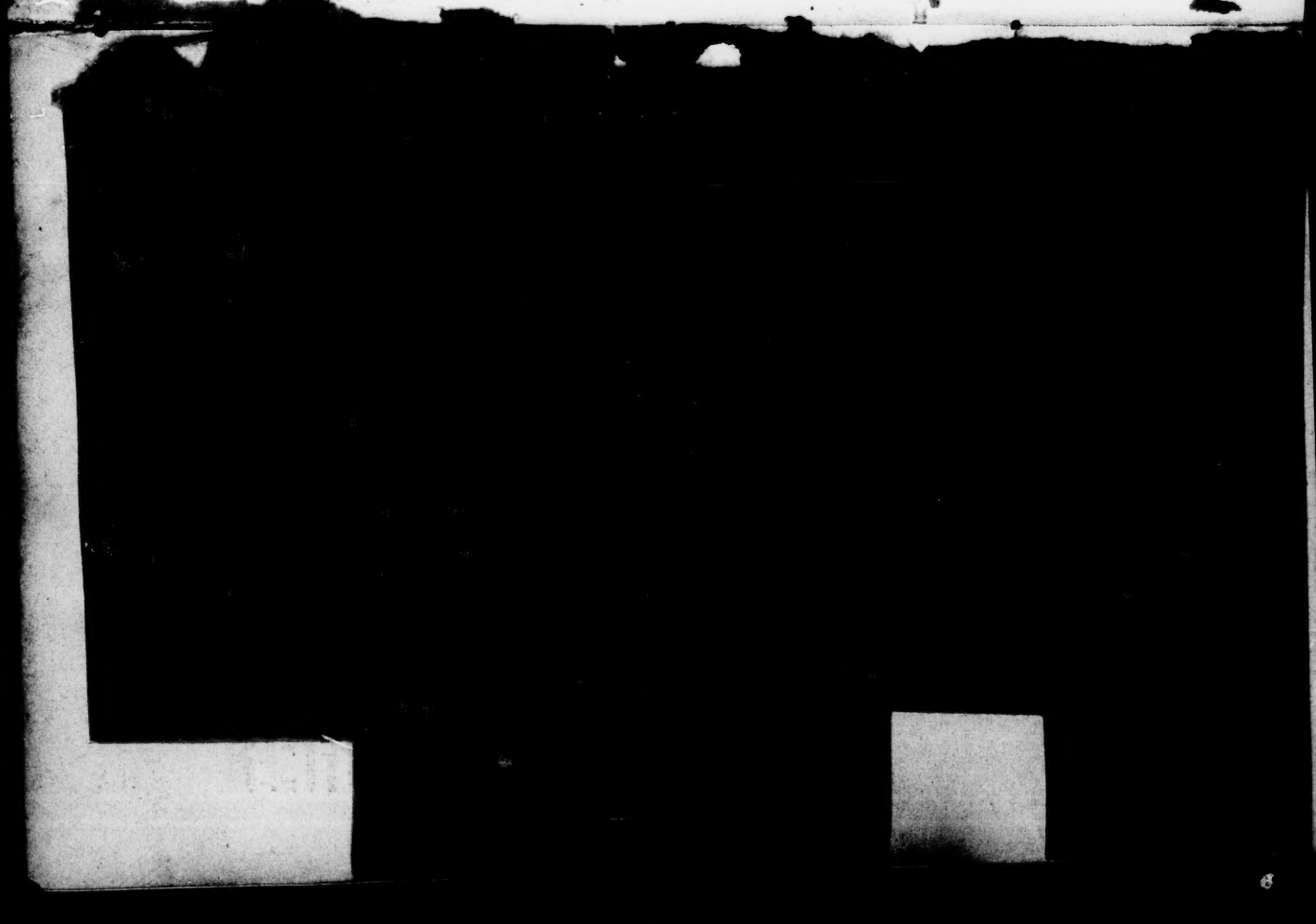

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INDEX.

	Original.	Print.
Libel	2	1
Stipulation	12	5
Monition and return of marshal	13	5
Bond given to marshal, and stipulation	18	7
Answer of respondent	21	8
Amendment to libel	29	11
Leave of court to file further amendments	32	12
Amendment to libel	33	12
Stipulation of the parties to traverse amendments, &c.	42	15
Order of court cause set down for hearing	43	15
Stipulation as to the proof	44	16
Orders of court on the hearing	44	16
Edward D. Brooks's deposition	47	17
John B. Chapin's "	53	19
Stipulation as to proofs	55	20
George Scott's deposition	61	22
Edward D. Brooks's 2d deposition	77	27
Deposition of William J. Taylor	92	31
Frank Lutgen	98	32
Joseph H. Lathrop	101	33
Samuel Woodward	110	36
Joseph Morton	119	38
John D. Sollitt	132	41
Alfred W. Rosman	141	44
Hiram McHenry	146	45

	Original.	Print.
Deposition of Theodore Breternitz	148	46
Roswell M. Hough	154	48
C. H. Hunt	158	49
H. B. Bay	159	50
Alfred W. Rosman, 2d ex.	163	51
John Dorchester	168	53
Henry G. Foote	169	53
Charles H Hunt, 2d ex.	170	53
Richard C. Bristol	171	54
Wales B. Loundsbury	173	55
Henry B. Wilmarth	174	55
Tolman Wheeler	175	56
John Dorchester, 2d ex.	177	56
Morgan L. Shapley	178	57
C. H. Hunt, 2d ex.	179	57
Edward D. Brooks, 3d ex.	181	57
Agreement between libellant's and insurance agents, Exhibit A	187	60
Exhibits B, C, D, E, F, G, H, I, K, and M	191	61
Here comes maps marked Exhibits "K" and "M"	237	75
Deposition of Volney E. Roscoe	237	76
George Steele	240	77
David Howard	241	77
Cornelius Price	243	78
Michael McDermott, 1st ex.	243	78
Michael McDermott, 2d ex.	246	79
George Scott, 2d ex.	248	80
Rowley Robinson, oral testimony	252	81
Respondent's proofs.		
Deposition of John Dorsey	254	82
Tobias Lowe	285	91
Alvin Dodge	292	93
William Baker	306	97
Philip Walsh	311	98
Jacob Gemlin	316	99
Henry Miller	317	99
George Davie	320	100
Thomas Daly	323	101
Patrick Walsh	339	105
Nelson Woodworth	348	107
Map.—Exhibit "A" attached to witness's deposition	365	112
Libellant's proof.		
Deed from Illinois and Michigan Canal to R. M. and Oramel S. Hough	367	112
R. M. Hough and wife to Charles J. Kershaw	370	113
Policy of Insurance to Hough & Kershaw in Ætna Insurance Co., No. 6110	377	115
Policy of insurance to Hough & Co. in Ætna Insurance Co., No. 6111	382	117
Map and plat of canal trustees' sub-division of Sec. 29, T. 39, N. R., 14 E.	387	118
Judgment entry	387	118
Appeal	389	119
Appeal bond	393	120

	Original.	Print.
Stipulation to correct an error	395	120
Certificate clerk of district court	396	121
Index to circuit court record.		
Order substituting Bates & Towslee proctors	297	121
cause set for hearing	397	121
affirming decree of district court	398	121
Appeal	399	121
Appeal bond	402	123
Citation	405	124
Certificate of clerk of circuit court	408	124

Chicago, in the county of Cook, in said district, against the Western Transportation Company, in a cause of damage, civil and maritime, allege as follows:

First. That on the 17th day of October, A. D. 1856, and before that time, these libellants were the owners, and in possession and occupation, of a wharf, situate on and in front of lots four and five, in block one, in the canal trustees' subdivision of section twenty-nine north, range fourteen east, on the east
3 bank of the south branch of the Chicago river, a navigable stream, of the value of twenty-five hundred dollars, with two large packing-houses standing on said lots, and adjoining to said wharf, and about forty feet distant from water's edge, and the said wharf extending along the said bank of said navigable stream about five hundred feet, with a shed extending from said packing-houses over said wharf to the river edge of the same, of the value of three thousand dollars; and all the apparatus and machinery necessary for carrying on a large beef and pork packing establishment, in said packing-house, and on said dock; which business these libellants had been before that time, and were then, carrying on.

These libellants further state that the value of their said wharf, shed over the same, and their said packing establishment, apparatus, machinery, and fixtures, was, at the time above specified, thirty thousand dollars.

Second. That these libellants were, at the time aforesaid, the 17th of October, A. D. 1856, the owners of the following described personal property, viz.:

A large quantity of salt, of the value of		$5,900
Ten barrels of beef,	" "	115
Sixty barrels of pork,	" "	1,230
4 1,600 tierces, (empty,) of the value of		2,250
8,900 barrels,	" " "	8,900

then situate and being on their said wharf, and in their said packing-houses, and which was destroyed in the manner hereinafter specified.

Third. That these libellants, at the time aforesaid, also held in their possession on their said wharf and in their said packing-houses, as bailees for divers firms and persons, the following described personal property, viz.:

234 barrels of beef hams	at $16		$3,744 00
18 " tongues	" "		288 00
1,040 " ex. mess beef	"	12	12,480 00
304 " " "	"	11	3,344 00
121 cattle hanging on the beams, 66,187 lbs	5		3,309 35
121 hides, 10,527 lbs	at 7½ cts.		789 53
500 barrels of pork			10,000 00
7,500 bushels of salt	at 4s.		3,750 00
50 tons of salt, of the value of			700 00
Lot of hides, " "			1,500 00

all of which property was destroyed by fire in the manner hereinafter set forth.

Fourth. That the said wharf of these libellants, although situate on a navigable stream, as aforesaid, was yet a private wharf, used before and at the time aforesaid exclusively by these libellants for their said business.

5 Fifth. That the Western Transportation Company, an incorporated company under the laws of the State of New York, have been and are now largely engaged in commerce between the port of Buffalo and the port of Chicago and other lake ports, and are the owners of divers propellers, steam and sail vessels, engaged in transporting freight between the different ports on the lakes.

Sixth. That the propeller Falcon, a vessel of twenty tons burthen and upwards, owned and employed by the said Western Transportation Company, in the transporting of freight between the ports of Chicago and Buffalo and

other lake ports, did, on the 17th day of October, A. D. 1856, take on freight for Buffalo at different points on the said south branch of the Chicago river, up said stream, above the wharf of these libellants; and that, on the evening of the same day, at about half-past eight o'clock, said propeller backed down said stream, stern foremost, her fires up, and her engine in motion, to a point opposite these libellants' wharf, and attempted to haul up said propeller and fasten her to the wharf of these libellants; and that, while so engaged, the watchman employed by these libellants to guard their said premises by night, in obedience to orders previously given him by them, forbade the captain and crew
6 of said propeller to fasten her to said wharf; but they, disregarding said watchman and his prohibition, and without the consent of these libellants, and against their orders and wishes, fastened said propeller to said wharf on the evening aforesaid.

Seventh. That said propeller, while moored at said wharf, as aforesaid, by the carelessness and negligence of said propeller's officers and crew, took fire, which was first discovered by the said watchman of these libellants at about half-past two o'clock in the morning of the 18th of October; that the flames, when first discovered, were about or near the smoke-pipe of said propeller, and did not occupy a space more than two feet; that said watchman immediately gave the alarm of fire, and in a few minutes six or eight workmen of these libellants arrived at the wharf, and immediately cut the said propeller loose from the wharf, and, as they had no means of staying the progress of the fire upon the propeller, they pushed her off, some distance from the wharf, into the stream, with hand-pikes, two or three times; but, as the wind was against them, it drove the propeller back against the wharf as often as they pushed her out.

As yet none of the crew of the propeller, numbering, as these libel-
7 lants are informed, eighteen men, all of whom slept on board of said propeller, were to be seen.

While these libellants' workmen were thus engaged in trying to push out into the stream the burning boat, before the fire caught the wharf, shed, and buildings of these libellants, they saw a part of the said propeller's crew standing upon the opposite side of a slough, about three rods distant, and the balance of said crew in a yawl-boat, rowing for the same point. They were immediately called to, and urged by the men engaged in pushing off the propeller, to come with their yawl-boat and fasten a rope to the propeller, which could easily have been done before the fire had touched the wharf, sheds, buildings, or property of these libellants, and tow said propeller out into the stream; and by so doing they would have saved the wharf, shed, buildings, and property of these libellants; but the said crew stood idly looking on, and refused to render any assistance, or come with their yawl-boat, without which it was impossible for the men on the wharf to fasten a rope to said propeller; and haul her out into the stream, and thus save the property of these libellants.

8 And these libellants charge that there was ample time, after the discovery of the fire on the propeller and the propeller's crew had been aroused, for said crew to have fastened a rope to said propeller, and have towed her out, out into the stream before the fire caught the wharf, shed, and buildings, and other property of these libellants, and thus have saved libellants' said property.

And these libellants charge gross carelessness and negligence on the part of the officers and crew of said propeller, in abandoning their vessel in the manner they did, leaving the wharf, shed, buildings and property of these libellants to be destroyed.

And these libellants further charge gross and wilful negligence on the part of said officers and crew, when appealed to by the employes of these libellants to come to their aid with the yawl-boat, which said crew must have known was the

only means that could be used to fasten a rope to said propeller and tow her out into the stream beyond the reach of setting on fire libellants' said property, for them to refuse to come to the assistance of the men engaged on the wharf, especially when said crew could have rendered the assistance necessary to have saved libellants property without risk or danger to themselves.

9 These libellants' therefore, charge the officers and crew of said propeller with wilfully trespassing upon the rights and property of these libellants, in fastening said propeller to said wharf in the manner they did, and of gross carelessness and negligence in said propeller taking fire, and afterwards in neglecting and refusing to use any means to save the property of these libellants from the fire, caused by their own wrongful act and negligence.

And these libellants further charge, that solely by means of said wrongful act, carelessness and negligence of the officers and crew of said propeller, their said wharf, shed, buildings and other property was consumed and destroyed.

Eighth. That the said wharf, shed, buildings and property above described were totally destroyed by fire on the morning of the 18th of October, A. D. 1856, caused by the burning of the said propeller as aforesaid, and that these libellants have sustained damage by reason thereof, to the amount of one hundred thousand dollars.

Ninth. These libellants further charge, that said propeller (if it was necessary for her at that time to have moored) might have moored and

10 fastened up just as easily and safely upon the opposite side of the river to these libellants' wharf, or might have anchored in the centre of said stream, without risk or danger to said vessel or to the property of any one; and these libellants charge gross carelessness and negligence on the part of the officers and crew of said propeller in navigating and mooring said vessel in the manner they did as above set forth.

Tenth. These libellants charge, that said propeller being moored and fastened to their said dock, in the manner before stated, greatly enhanced the risk of fire to the said libellants' wharf, shed, buildings, and property, situate on said wharf, and in said packing-house, and these libellants aver, that, had they known that their said property would have been exposed to such additional hazard and risk, they would have effected further insurance thereon; therefore, these libellants claim that they have sustained great damage by reason of the said wrongful act of the said officers and crew of said propeller, in thus mooring to their said wharf, thereby greatly increasing and enhancing the risk of these libellants by fire.

Eleventh. These libellants further charge gross carelessness and negligence on the part of said officers and crew of said propeller, in not keeping any

11 sufficient watch upon said propeller, to guard against fire while she lay moored at their said wharf, whereby these libellants have sustained damage as aforesaid.

Twelfth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore these libellants pray that a warrant of arrest in due form of law, according to the course of this honorable court, in cases of admiralty and maritime jurisdiction, may issue against the said Western Transportation Company, and it may be compelled to appear and answer all and singular the matters aforesaid; and if said defendant cannot be found, that an attachment may issue against its goods and chattels, and if some be found, that said company's credits and effects, in whosoever hands the same may be, may be attached as garnishees, and that this honorable court would be pleased to decree payment of the

damages aforesaid with costs, and that these libellants may have such other or further relief as they may be entitled to receive.

Sworn to.

ORAMEL S. HOUGH.
C. J. KERSHAW.
C. H. SEAVERNS.

Sworn to before me this 13th day of Nov., 1856, by Charles H. Seaverns.
WM. H. BRADLEY, *Clerk.*

12

C. B. HOSMER, *Proctor.*
C. BECKWITH,
V. H. HIGGINS, *of Counsel.*

Endorsed: Let a monition, in the nature of summons, issue against the defendant, with a clause of attachment against the property of the defendant, as prayed in libel. Nov. 13th., 1856.

To the clerk.

THOMAS DRUMMOND.

Endorsed: Filed Nov. 13th, 1856.

WM. H. BRADLEY, *Clerk.*

District court of the U. States for the northern district of Illinois.

Whereas a libel was filed in this court, on the 13th day of November, A. D. 1856, by Oramel S. Hough, Charles J. Kershaw, and Charles H. Seaverns, against the The Western Transportation Company, for the reasons and causes in the said libel mentioned, and praying that the def't may be attached and held to answer the prayer of the libellant; and the said libellant, Charles H. Seaverns, Charles B. Hosmer, surety; the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the libellants, or his surety, execution may issue against their goods, chattels and lands, for the sum of two hundred and fifty dollars:

13 Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulated undersigned shall be, and are, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall pay all such costs as shall be awarded against them by this court, or in case of appeal, by the appellate court.

C. H. SEAVERNS.
C. B. HOSMER.

Taken and acknowledged this 13th day of November, A. D. 1856, before me.
WM. H. BRADLEY, *Clerk.*

Endorsed: Filed this 13th day of Nov. A. D. 1856.
WM. H. BRADLEY, *Clerk.*

And thereupon said libellants, by their said proctors, sued out of said clerk's office their process of monition, in nature of summons, and an attachment against the Western Transportation Company; which said monition, together with the return of the marshal thereon, and also the proof of notice, by publication, returned therewith, are in the words and figures following, to wit:

District court of the United States, northern district of Illinois.

The United States of America, to the marshal of the northern district of Illinois, greeting:

14 Whereas a libel has been filed in the district court of the United States for said northern district of Illinois, on the thirteenth day of November, in the year of our Lord one thousand eight hundred and fifty-six, by

Oramel S. Hough, Charles J. Kershaw, and Charles H. Seaverns, under the name and firm of Hough & Company, against the Western Transportation Company, in a certain action, civil and maritime, for damages and loss by fire, therein alleged, to the sum of one hundred thousand dollars; and said libellants also pray that a warrant of arrest may issue against the said defendant:

Now, therefore, we do hereby empower, and strictly charge and command you, the said marshal, that you summon and admonish the said defendant, the Western Transportation Company, if they shall be found in your district, that they be and appear before the said district court on the first Monday in the month of December next, at the United States court-room, in the city of Chicago, in said northern district of Illinois, then and there to answer said libel, and to make their allegations in that behalf.

And you are hereby further empowered, and strictly enjoined and commanded, to attach the goods and chattels of said company, and if
15 none be found, then their credits and effects, to the amount of one hundred thousand dollars; and have you then and there this writ.

Witness the Hon. Thomas Drummond, judge of said district court, at Chicago, this thirteenth day of November, in the year of our Lord one thousand [SEAL.] eight hundred and fifty-six, and of our independence the eighty-first year.

WM. H. BRADLEY, *Clerk.*

Endorsed: I have executed the within monition, in nature of summons and attachment, by attaching the propellers Plymouth and Old Concord as the property of the Western Transportation Company, together with their boats, tackle, apparel, and furniture, on the 13th day of November, A. D. 1856, and held the same in my custody until released by a bond, which is herewith returned into court; also giving due notice, as required by law, a certified copy of which notice is herewith attached.

IRAM NYE,
U. S. Marshal, Nor. Dist. Ill's.
By H. M. MATTHEWS,
Deputy.

Notice.

To all persons having, or pretending to have, any right, title, or interest
16 in or to the propellers Plymouth and Old Concord, their engines, machinery, boats, tackle, apparel, and furniture, or knowing or having anything to say why said propellers Plymouth and Old Concord, their engines, machinery, boats, tackle, apparel, and furniture, should not be pronounced against, according to the prayer of a libel hereinafter mentioned:

You are hereby notified, that by virtue of a citation and attachment, dated the 13th day of November, A. D. 1856, issued out of and under the seal of the United States district court in and for the northern district of Illinois, in admiralty, in pursuance of the prayer of a libel filed in said court by Oramel S. Hough, Charles J. Kershaw, and Charles H. Seaverns, against the Western Transportation Company in a certain action, civil and maritime, praying that judgment may be pronounced against said Western Transportation Company, in favor of said libellants, for the sum of one hundred thousand dollars, in a cause civil and maritime, I have seized said propellers Plymouth and Old Concord, their engines, machinery, boats, tackle, and furniture, and their appurtenances, under and by virtue of said monition.

You are hereby further notified to be and appear, on the first Monday of December next, if that shall be a day of jurisdiction, if not, on the next
17 day of jurisdiction thereafter, at ten o'clock of that day, at the term of said court then to be holden in and for said district at the city of Chicago, to interpose your claim and say why said propellers Plymouth and Old Con-

cord, their engines, machinery, boats, tackle, apparel, and furniture, and their appurtenances, should not be pronounced against in said matter for said sum and costs, pursuant to the prayer of said libel.

IRAM NYE,
U. S. Marshal, Northern District Illinois.

CHICAGO, *November* 15, 1856.

This is to certify that the annexed notice was published in the Chicago Journal, a daily newspaper printed in the city of Chicago, county of Cook, and State of Illinois, 14 times, to wit, for two successive weeks, as follows: The first insertion on the 17th day of Nov., 1856, in vol. 15, No. ——, of said paper.

Dated at Chicago, Nov. 26th, 1856.

R. L. & C. L. WILSON & CO.,
Publisher Chicago Daily Journal.

Endorsed: Filed Dec. 1st, 1856.

WM. H. BRADLEY, *Clerk.*

18 The bond given to the marshal on the release of the propellers Plymouth and Old Concord, the property of said Western Transportation Company, together with the stipulation of the libellants' proctor thereto attached, are in the words and figures following, to wit:

Know all men by these presents, that we, the Western Transportation Company, of Buffalo, State of New York, as principal, and Charles Walker, of Chicago, county of Cook, and State of Illinois, as sureties, are held and firmly bound unto Oramel S. Hough, Charles J. Kershaw, and Charles H. Seaverns, in the penal sum of one hundred thousand dollars, to be paid unto the said Oramel S. Hough, Charles J. Kershaw, and Charles H. Seaverns, which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated at Chicago the 15th day of November, in the year of our Lord one thousand eight hundred and fifty-six.

Whereas, in a certain cause of civil and maritime, moved and prosecuted in the district court of the United States of America for the northern district of Illinois on behalf of the above-named Oramel S. Hough, Charles J Ker-
19 shaw, and Charles H. Seaverns against the Western Transportation Company, a warrant of arrest has been issued out of the said court against the said company, which said warrant is now in the hands of Iram Nye, marshal of said district, or in virtue of which said warrants the said Western Transportation Company's property, to wit, the propellers Plymouth and Old Concord, has been attached by Iram Nye, marshal, and are now in his custody:

Now, therefore, the condition of this obligation is such, that if the above-bounden Western Transportation Company, the claimants of said propellers Plymouth and Old Concord, their boats, tackle, apparel, furniture, and engines and machinery, shall well and truly abide and answer the decree of said court in the aforesaid cause, then this obligation shall be void, otherwise it shall remain in full force and virtue.

THE WESTERN TRANSPORTATION CO., [SEAL.]
By ROLLIN ROBINSON, *Agent.* [SEAL.]
CHARLES WALKER. [SEAL.]

In presence of—

20 UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Charles Walker, being duly sworn, deposes and says, that he is a resident of the northern district of Illinois, and that he owns property in said district, subject to execution, worth one hundred thousand dollars over and above all just debts and liabilities.

CHARLES WALKER.

Sworn to and subscribed before me this 15th day of Nov., A. D. 1856.

JOHN A. BROSS,
U. S. Com'r, Nor. Dist. Ill's.

Endorsed: Security approved.

THOMAS DRUMMOND.

Stipulations of libellants' counsel to be attached.

U. S. dist. court.—In admiralty.

HOUGH *et al.*
vs.
WESTERN TRANS. CO.

The stipulation to be filed in the foregoing cause, under rule 4, may be signed, on the part of the def't, by Rollin Robinson, as attorney of the def't, which shall be a sufficient execution of said stipulation on the part of the def't.

C. BECKWITH,
Proctor for Libellants.

U. S. dist. court.—In admiralty.

HOUGH & CO.
vs.
WESTERN TRANSPORTATION CO.

21 Upon the defendants entering their appearance in the above suit, and filing a stipulation in the sum of one hundred thousand dollars, with sureties, to be approved by the court, agreeably to rule four of the rules of the Supreme Court in admiralty, the attachment may, under the order of the court, be dissolved.

C. BECKWITH,
Proctor for Libellants.

Nov. 14th, 1856.

The entering of the appearance above stipulated for shall not deprive the defendants of any right to raise any and all questions to the jurisdiction of the court.

C. BECKWITH,
Proctor for Libellants.

Endorsed: Filed Dec. 1st, 1856.

WM. H. BRADLEY, *Clerk.*

And afterwards, to wit, on the fourth day of February, in the year of our Lord one thousand eight hundred and fifty-seven, came the Western Transportation Company, respondent, by Messrs. Hooper and Clements, its proctors, and filed in the office of the clerk of said court its answer to the libel of the libellants heretofore filed herein, which said answer is in the words and figures following, to wit:

United States district court, northern district of Illinois.—In admiralty.

22 *The answer of the Western Transportation Company, defendant, to the libel and complaint of Oramel S. Hough, Charles J. Kershaw, and Charles H. Seaverns against the said the Western Transportation Company.*

And now comes the said the Western Transportation Company, the defendant in the said libel and complaint named, and saving and reserving to itself all benefit and advantage of all and all manner of exception, obligation, and question, as to the jurisdiction of this court in the premises, the said defendant to the

several matters and things in the said libel and complaint contained, answering, says:

First. That, as to the several matters stated and alleged in the first, second, and third articles of the said libel and complaint contained, the defendant is ignorant, and it therefore leaves the said libellants to make such proof in reference thereto as they shall be advised and able to make.

Second. And for answer to the several matters stated and charged in the fourth article of the said libel, the defendant denies that the wharf mentioned in said article was a private wharf, and occupied exclusively by the said libellants for their business, as is in said article particularly stated and charged.

Third. And for answer to the several matters stated and charged in
23 the fifth article of said libel and complaint, this defendant admits the said matters to be true in substance and matter of fact.

Fourth. And for answer to the several matters stated and charged in the sixth, seventh, eighth, ninth, tenth, and eleventh articles of the said libel and complaint, this defendant denies the same, and each and every part thereof, as fully as the same are stated and charged in said several articles, and prays that this general denial may be taken to have the same force and effect as if the said several articles and the matters therein contained were expressly denied, sentence by sentence, and paragraph by paragraph, except in so far as some of the said several matters are herein expressly, or by implication, admitted to be true.

Fifth. And for answer to the matters stated and charged in the twelfth article of said libel and complaint, this defendant denies the several allegations therein made as fully in all respects as the same are therein stated and set forth.

Sixth. And for further answer to the said libel and complaint, or to so much and such parts thereof as it is advised it is necessary or material for it to make answer unto, this defendant says, that it is a corporation, created, or-
24 ganized, and exisiting under and by virtue of the laws of the State of New York, having its principal office within said State, and that it now is, and was, at the several times in the said libel mentioned, principally engaged in the business of commerce and navigation between ports and places in different States upon the lakes, and the navigable waters connected therewith, in the transportation of goods, property, merchandise, and passengers, as occasion of trade might require.

That, at the time mentioned in said libel and complaint, the said defendant was the owner of the said propeller Falcon, which said propeller was, at the time, actually engaged in the business of the said defendant, and making regular trips and voyages from Buffalo, in the State of New York, to Chicago, in the State of Illinois, and from the last-mentioned place back to Buffalo aforesaid.

That in the prosecution of one of the said regular trips or voyages, the said propeller Falcon was, at the day mentioned in the said libel, at the city of Chicago, lying in the certain creek, stream, or river, known as Chicago river, which said creek, stream, or river now is, and was, at the time aforesaid, a public, navigable river, flowing into Lake Michigan and forming an arm thereof, and making the harbor at Chicago aforesaid.

25 And the defendant in fact says, that the owners of property upon the banks of said stream or river had made and constructed wharves and docks for the convenience and accommodation of steamboats, propellers, vessels, and other craft visiting the said port and city of Chicago, and that for the use of such docks and wharves by steamboats, propellers, and vessels the said owners of property were accustomed to charge certain rates of compensation.

And these defendants further say, that the said stream or river was navigable and in actual use for the length of four miles and upward from its mouth, and the said wharves and docks were so built and constructed for the length of four miles and upwards.

Seventh. That on or about the seventeenth day of October last past, the said

propeller Falcon, then being at Chicago aforesaid, in the said stream or river, at a considerable distance from its mouth or entrance into Lake Michigan, had taken on board a full cargo of property and merchandise for the purpose of carrying the same to Buffalo aforesaid, and in the afternoon of the last-mentioned day the master of the said propeller undertook to pass down said stream or river for the purpose of commencing his return voyage to Buffalo; that in
26 passing down said stream or river the weather suddenly became so thick and foggy as to render it unsafe and dangerous to proceed further that night, and thereupon the master of said propeller caused the same to be moored at one of the wharves or docks so, as aforesaid, built and constructed in the said river, the nearest and most convenient to the place where the said propeller then was, which happened to be the wharf or dock mentioned in the libel, with the intention of resuming the said trip or voyage early the next morning, or as soon as the weather would permit.

That having caused the said propeller to be safely moored, the fires of the said propeller were extinguished, a good and sufficient watch was set, and every precaution taken to prevent the occurrence of any accident or misfortune during the night; that at a suitable and proper time, and before ten o'clock in the evening, the master and crew of the said propeller retired to their berths for the night, at which time everything on board the propeller indicated perfect security.

And this defendant further says, that at about two or three o'clock in the morning of the next day the buildings or shed next to where the
27 said propeller then lay, and the said propeller, were discovered to be on fire, and in consequence of the state of the weather at the time it was impossible to extinguish the same; and that, in consequence of said fire, the said propeller and its cargo were wholly lost and destroyed, as was also the buildings, sheds, and wharves adjoining where the said propeller then lay.

And the defendant in fact says, that the said fire and loss of property was not caused by the carelessness, negligence, and improper conduct of the master, officers, or crew of the said propeller; on the contrary thereof, this difendant says that the said master, officers, and crew made use of every necessary safeguard and precaution to prevent and guard against accident and misfortune by fire, or otherwise, and that they used every needful exertion to extinguish the same, and prevent the destruction of property.

Eighth. And this defendant further articulates, alleges and propounds, that the said fire and loss and destruction of property was wholly caused by the carelessness, negligence and improper conduct of the libellants in this cause, and of their servants and agents having charge of the buildings and sheds situated upon and adjacent to the docks and wharves where the said propeller lay at the time of such fire.

And the defendant further alleges, that the said fire originated in the
28 said buildings of the libellants, through the carelessness, negligence and improper conduct of the libellants, their servants and agents, and that in consequence of such fire, this defendant sustained loss and damage to the amount of forty-five thousand dollars, for which they claim reparation in this action, as well for the loss of the said propeller and its appurtenances, as for the value of its cargo on board.

Wherefore, this defendant prays the judgment and decree of this court, that the said libel and complaint shall be dismissed with costs, and that the said libellants may be decreed to pay this defendant the amount of the damage by it sustained in consequence of the said fire so caused as aforesaid.

WESTERN TRANS. COMPANY,
By P. L. STERNBERG, *President.*

UNITED STATES OF AMERICA,
Northern District of New York, ss:

On this twenty-third day of January, one thousand eight hundred and fifty-seven, at the city of Buffalo, within the district aforesaid, personally before me came Pearl L. Sternberg, of the city aforesaid, who, being duly sworn, made oath that he is the president of the Western Transportation Company,
29 the defendant in the foregoing answer named, and that he is the principal officer thereof; that he has read the foregoing answer, and that the same is true in substance and matter of fact to the knowledge of this deponent, except as to the matters and things there stated upon the information and belief of the deponent, and as to those matters he believes it to be true.

DENNIS BROWN,
U. S. Com.
HOOPER & CLEMENTS,
Proctors for Resp't.

Endorsed: Filed Feb'y 4th, 1857.

WM. H. BRADLEY, *Clerk.*

And afterwards, to wit, on the 10th day of March, in the year last aforesaid, came again the said libellants, by their said proctors, and filed in the office of the clerk of said court their amendments to their libel heretofore filed herein, together with a notice to the respondent's proctor, which said amendments and notice are in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois:

To the honorable Thomas Drummond, judge of the district court of the United States for the northern district of Illinois:

Amendments to the libel by Oramel S. Hough, Charles J. Kershaw, and Charles H. Seaverns, against the Western Transportation Company, in a case of damage, civil and maritime.

First. Insert after the word "bailees," in the third article, the words
30 following: "and agents."

Second. Add at the conclusion of the third article the words following: "And that these libellants have been and are specially authorized and requested by their bailors and principals, to wit, the general owners of the property mentioned in this article, and by all other persons who now have or claim any right or title in the same, or in the damages to be recovered for the destruction and loss thereof, to prosecute this action for the use and benefit of any and every person or party so interested therein, as well as for themselves."

Third. Insert after the word "upwards," in the sixth article, the words following: "enrolled and licensed for the coasting trade, and at the time herein mentioned."

Fourth. Insert after the word "Chicago," in the sixth article, the words following: "in the State of Illinois."

Fifth. Insert after the word "Buffalo," where the same first occurs in the sixth article, the words following: "in the State of New York."

Sixth. Insert after the word "night," in the sixth article, the words following: "and for no other purpose whatever."

31 Seventh. Strike out the word "balance," in the seventh article, and insert in lieu thereof, "other part."

Eighth. Insert after the word "river," in the ninth article, the word "as."

Ninth. Insert afer the word "stream," in the ninth article, the words following: "or above or below the said wharf."

District court of the United States, northern district of Illinois.

ORAMEL S. HOUGH, CHARLES J. KERSHAW, and CHARLES H. SEAVERNS
against
THE WESTERN TRANSPORTATION COMPANY.

SIR: You will please take notice that a motion will be made before his honor Thomas Drummond, judge of this court, at the opening of court on the second Monday of March next ensuing, or as soon thereafter as the same can be heard, for an order of leave to amend the said libel in certain particulars, of which the foregoing is a copy.

Yours, &c.,

C. B. HOSMER,
Libellant's Proctor.

32 Chicago, Feb. 24th, 1858.

To HOOPER, Esq., *Proctor for Def'ts.*

Endorsed: Service admitted Feb. 26th, 1858.

E. R. HOOPER,
Proctor for Claimants.

Endorsed: Filed March 10th, 1858.

WM. H. BRADLEY, *Clerk.*

Whereupon, on the same day, to wit, on the tenth day of March, in the year last aforesaid, in the March adjourned term A. D. 1858 of said court, the following proceedings were had in said court in said entitled cause, and entered of record, to wit:

ORAMEL S. HOUGH, CHARLES J. KERSHAW, and CHARLES H. SEAVERNS
vs.
THE WESTERN TRANSPORTATION COMPANY. } Libel.

On motion of the libellants, by their proctors, leave is granted them by the court to amend their libel in conformity with specifications now filed.

And afterwards, to wit, on the twenty-fourth day of March, in the year last aforesaid, in the said March adjourned term A. D. 1858 of said court, the following further proceedings were had in said court, in said entitled cause, and entered of record, to wit:

33 ORAMEL S. HOUGH, CHARLES J. KERSHAW, and CHARLES H. SEAVERNS
vs.
THE WESTERN TRANSPORTATION COMPANY. } Libel.

On motion of the libellants, by their proctor, leave is granted them by the court to file an additional amendment to their libel heretofore filed herein.

And thereupon the said libellants, by their said proctors, filed in the office of the clerk of said court their additional amendments to their libel heretofore filed herein, which said additional amendments are in the words and figures following, to wit:

To the honorable Thomas Drummond, judge of the district court of the United States for the northern district of Illinois:

Additional amendments to the libel of Oramel S. Hough, Charles J. Kershaw and Charles H. Seaverns against the Western Transportation Company, in a cause of damage, civil and maritime.

First. In the statement of the parties, after the word "district," insert the

words following: "for themselves and for the persons, firms and corporations herein mentioned, namely, the Chicago Mutual Insurance Company, of
34 Chicago, Illinois; the Ætna Insurance Company, of Hartford, Connecticut; the Hartford Fire Insurance Company, of Hartford, Connecticut; the Northwestern Insurance Company, of Oswego, New York; the Phœnix Insurance Company, of Hartford, Connecticut; the Garden City Insurance Company, of Chicago, Illinois; the Star Insurance Company, of Ogdensburg, New York; the Metropolitan Insurance Company, of the city of New York; Harry Felt, Horace D. Hawkins and William Van Antwerp, partners, under the name and style of Felt, Hawkins and Company, of Albany, New York, and for all others entitled."

Second. After the word "time," in the first article, strike out the words "these libellants," and insert in lieu thereof the words following: "the said Hough and Company."

Third. After the words "lots four and five," in the first article, insert the words, "of which lots the said Hough and Company were then owners."

Fourth. After the word "stream," where the same first occurs in the first article, insert the words following: "such wharf being."

35 Fifth. After the words "river edge of the same," in the first article, insert the words following: "such shed being."

Sixth. After the word "business," in the first article, strike out the words "these libellants," and insert in lieu thereof the words following: "the said Hough and Company."

Seventh. After the word "that," in the commencement of the second article, strike out the words "these libellants," and insert in lieu thereof the words following: "the said Hough and Company."

Eighth. In the second article strike out the words and figures, "a large quantity of salt, of the value of $5,900," and insert in lieu thereof the words and figures following: "forty thousand bushels of salt, of the value of $20,000."

Ninth. In the second article strike out the words and figures, "sixty pork $1,230," and insert in lieu thereof the words and figures following: "one hundred barrels of mess pork, of the value of $2,000."

Tenth. In the second article strike out the words and figures, "1,600 tierces empty, $2,250," and insert in lieu thereof the words and figures follow-
36 ing: "one thousand tierces empty, of the value of $1,500."

Eleventh. In the second article strike out the words and figures, "8,900 barrels, $8,900," and insert in lieu thereof the words and figures following: "nine thousand five hundred barrels empty, of the value of $9,500."

Twelfth. After the word "that," in the commencement of the third article, strike out the words "these libellants," and insert in lieu thereof the words following: "the said Hough and Company."

Thirteenth. After the figures "789 53," in the third article, insert the words following: "which property, amounting in total value to the sum of twenty-three thousand nine hundred and fifty-four dollars and eighty-eight cents, then belonging to the said firm of Felt, Hawkins and Company, and also."

Fourteenth. In the third article strike out the words and figures, "7,500 bushels of salt at 4s., 3,750," and insert in lieu thereof the words and figures following: "nine thousand five hundred and seventy-two bushels of salt, of the value of $4,786, which pork and salt last mentioned belonged to the firm of Wat-
37 son and Williams."

Fifteenth. Strike out the words "these libellants" in both connexions in the fourth article, and insert in lieu thereof the words "Hough and Company."

Sixteenth. Add at the conclusion of the fourth article the words following: "as was also the dock in front of the same; that the said Hough and Company had previously made and prepared such dock on their own land, at their own expense, for their own use, by dredging the bottom of the river near the bank,

and to the distance of thirty feet towards the channel; and that before the act of dredging herein mentioned, vessels employed in navigation could not have approached or anchored within twenty feet of the bank for want of sufficient depth of water; so that the river to that distance from the bank was of no public use or benefit whatever before the dock was made and prepared as aforesaid; and that all of said dredging was done upon the land of said Hough and Company."

Seventeenth. Strike out the words "these libellants" in the several
38 connexions where the same occur in the sixth article, and insert in lieu thereof "Hough and Company."

Eighteenth. Strike out the words "these libellants," where the same occur in the first two connexions thereof, in the seventh article, and insert in lieu thereof "Hough and Company."

Nineteenth. Strike out the words "these libellants' workmen" in the seventh article, and insert in lieu thereof the words following: "the workmen of Hough and Company."

Twentieth. After the words "before the fire caught the wharf, shed, and buildings of," in the seventh article, strike out the words "these libellants," and insert in lieu thereof "Hough and Company."

Twenty-first. After the words "employees of" in the seventh article, strike out the words "these libellants," and insert in lieu thereof "Hough and Company."

Twenty-second. Add at the conclusion of the second article the words following: "except the salt mentioned in this article, which was damaged
39 to the amount of one-half its value, to wit, $10,000."

Twenty-third. Add at the conclusion of the third article the words following: "except the salt mentioned in this article, which was damaged to the amount of one-half its value, to wit, $2,383."

Twenty-fourth. Add a new article, as follows: "That part of the property mentioned in the first, second, and third articles, so destroyed and damaged by fire as aforesaid, had been, and was at the time of the destruction and loss thereof, insured against loss and damage by fire, by and on the part of the said several insurance companies hereinbefore specified in the statement of parties, and that such insurance companies have since paid, on account of their insurance on the same, to the owners of the property so destroyed and damaged, the sums hereinafter mentioned—that is to say:

1. The Chicago Mutual Insurance Company has paid to Hough and Company five thousand dollars ($5,000;) and the same company has paid to Watson and Williams three thousand five hundred dollars (3,500;) making
40 in all the sum of eight thousand five hundred dollars ($8,500.)

2. The Ætna Insurance Company has paid to Hough and Company, on two several policies, five thousand dollars for each, amounting in all to ten thousand dollars ($10,000.)

3. The Hartford Fire Insurance Company has paid to Hough and Company five thousand dollars ($5,000.)

4. The Northwestern Insurance Company has paid to Hough & Company four thousand dollars ($4,000.)

5. The Phœnix Insurance Company has paid to Hough and Company five thousand dollars ($5,000.)

6. The Garden City Insurance Company has paid to Hough and Company three thousand dollars ($3,000.)

7. The Star Insurance Company has paid to Watson and Williams two thousand eight hundred and ninety-four dollars and seventy cents ($2,894 70 cts.)

8. The Metropolitan Insurance Company has paid to Watson and Williams three thousand six hundred and eighteen dollars and thirty-eight cents ($3,618 38 cts.)

9. That the Buffalo Mutual Insurance Company, which has not as yet joined

in the prosecution of this action, has paid Watson and Williams four thousand one hundred and fifty-eight dollars and ninety-four cents ($4,158 94 cts.)

41 Twenty-fifth. Strike out in the third article the words and figures following: "50 tons of salt, of the value of $700."

Twenty-sixth. Add a second new article, as follows: "That the firm of Felt, Hawkins and Company had no insurance on their property mentioned in the third article, and that their loss in the same was total."

C. B. HOSMER, *Proctor for Libellants.*

District court of the United States, northern district of Illinois.

ORAMEL S. HOUGH, CHARLES J. KERSHAW, and CHARLES H. SEAVERNS
against
THE WESTERN TRANSPORTATION COMPANY.

GENTLEMEN: You will please take notice that a motion will be made before his honor Thomas Drummond, judge of this court, at the opening of court, on Monday, the 22d day of March inst., for leave to amend the libel in this action, in additional particulars, of which the foregoing is a copy.

Chicago, March 20th, 1858.

Yours, &c.,

C. B. HOSMER, *Proctor for Libellants.*

To HOOPER & CAUSIN, *Proctors for Defendant.*

42 Endorsed: Filed by leave of court, March 24th, 1858.

WM. H. BRADLEY, *Clerk.*

And afterwards, to wit, on the thirtieth day of March, in the year last aforesaid, the following stipulation of the parties in said entitled cause was filed in the office of the clerk of said court, to wit:

In U. S. district court, northern district of Illinois.

HOUGH *et al.*
vs.
THE WESTERN TRANSPORTATION CO.

It is agreed in this case that the answer to the libel filed in this cause shall be considered as amended, so far as to traverse the allegations of the amendments to the libel made subsequently to the original filing of the same.

March 30th, 1858.

A. W. ARRINGTON,
Proctor for Libellants.
E. R. HOOPER,
J. M. S. CAUSIN,
Proctors for Respondents.

Endorsed: Filed March 30th, 1858.

WM. H. BRADLEY, *Clerk.*

43 And on the same day, to wit, Tuesday, the thirtieth day of March, in the year last aforesaid, in the March adjourned term, A. D. 1858, of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

ORAMEL S. HOUGH, CHARLES J. KERSHAW, and CHARLES H. SEAVERNS
vs.
THE WESTERN TRANSPORTATION COMPANY. } Libel.

Now come the parties by their respective proctors, and by agreement this cause is set down for hearing upon the libel, the answer thereto, the replication

and the proofs and testimony, written and oral, and after the reading of depositions, and taking the oral testimony of John P. Chapin, the hour of adjournment having arrived, the further trial of this cause is postponed until to-morrow morning.

And on the same day, to wit, the thirtieth day of March, in the year last aforesaid, the following stipulation of the parties in said entitled cause was filed in said court, to wit:

United States district court for the northern district of Illinois.

44 HOUGH & Co., libellants,
vs.
WESTERN TRANSPORTATION Co., def't. } In admiralty.

It is hereby admitted by the defendant that the roof to the shed over the wharf of the libellants, at the time of the fire, 18th Oct., 1856, was a gravel roof, and fire-proof, and it is hereby stipulated and agreed that that fact shall be considered by the court in deciding this case, the same to all intents and purposes as though it had been proved by the said libellants by competent witnesses.

Dated this 29th day of March, A. D. 1858.

HOOPER & CAUSIN,
Proctors for Resp'd'ts.
C. B. HOSMER,
Libellants' Proctor.

Endorsed: Filed March 30th, 1858.

WM. H. BRADLEY, *Clerk.*

And on the next day, to wit, Wednesday, the thirty-first day of March, in the year last aforesaid, in the said March adjourned term, A. D. 1858, of said court, the following further proceedings were had in said court, in said entitled cause, and entered of record, to wit:

ORAMEL S. HOUGH, CHARLES J. KERSHAW, and CHARLES H. SEAVERNS
vs.
THE WESTERN TRANSPORTATION COMPANY. } Libel.

45 Now come again the parties, by their respective proctors, and after concluding the reading of depositions, and taking the oral testimony of Edward D. Brooks on the part of the libellants, and of Rollin Robinson on the part of the respondents, the testimony being closed, the arguments of counsel are postponed until to-morrow morning.

And on the next day, to wit, Thursday, the first day of April, in the year last aforesaid, as yet of the said March adjourned term, A. D. 1858, of said court, the following further proceedings were had in said court, in said entitled cause, and entered of record, to wit:

ORAMEL S. HOUGH, CHARLES J. KERSHAW, and CHARLES H. SEAVERNS
vs.
THE WESTERN TRANSPORTATION COMPANY. } Libel.

Now come again the parties, by their respective proctors. and after hearing a part of the arguments of the advocate for the libellants, the hour of adjournment having arrived, the further trial of this cause is postponed until to-morrow morning.

46 And on the next day, to wit, Friday, the 2d day of April, in the year last aforesaid, as yet of the said March adjourned term, A. D. 1858, of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

ORAMEL S. HOUGH, CHARLES J. KERSHAW, and CHARLES H. SEAVERNS
vs.
THE WESTERN TRANSPORTATION COMPANY. } Libel.

Now come again the parties, by their respective counsel, and after hearing further argument until the hour of adjournment, without concluding the same, the concluding arguments are postponed until to-morrow morning.

And on the next day, to wit, Saturday, the third day of April, in the year last aforesaid, as yet of the said March adjourned term, A. D. 1858, of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

ORAMEL S. HOUGH, CHARLES J. KERSHAW, and CHARLES H. SEAVERNS
vs.
THE WESTERN TRANSPORTATION COMPANY. } Libel.

47 Now come again the parties, by their respective proctors, and after hearing the concluding arguments, the court not being now sufficiently advised in the premises, takes time to consider.

The oral testimony of John P. Chapin and Edward D. Brooks, on the part of the libellants, taken in open court, upon the hearing of this cause, on the thirtieth and thirty-first days of March, in the year last aforesaid, is in the words and figures following, to wit:

HOUGH, *et al.*
vs.
W. TRANSPORTATION CO.

March 31st, 1858. MARCH 31st, 1858

Edward D. Brooks sworn for the libellants.

Examined by Judge Arrington.

Q. You have been examined in this case before?

A. Yes, sir.

Q. In that case, in your former testimony, you estimated the salt by bushel? (See 1st addition.)

A. Yes, sir.

Q. I want you now to separate the part belonging to Watson & Williams, and the part belonging to Hough, estimated in bushels and sacks.

48 A. Hough & Co. had 40,000 bushels in sacks, damaged to the amount of $10,000. Watson & Williams had 9,572 bushels, damaged to the amount of $2,393. (See addition 2d.)

Q. What was the last?

Ans. Watson & Williams's damage was $2,393.

Q. How was your former estimate; was it in bushels and sacks?

Ans. Mr. Watson's was not in at all.

Q. What was the total amount Watson had there of salt and other property?

A. 500 barrels of mess pork.

Q. What was the value of it?

A. $10,000. Salt he has already there.

Q. What was the sum total in value?

A. $12,393. (See addition 3d.)

Q. In the estimate you made in your former evidence of the damage to Hough, how much did you state was unpaid by the insurance co's? You stated it then, but it has been omitted by the commissioner.

A. Hough's total loss was $18,000.

Q. State his total loss before he was paid by the insurance co's.

A. It was $50,000.

49 Q. What was paid by the ins. co's?

A. $32,000. It left $18,000 loss.

Q. by the court. Do you include the building in that?

A. Yes, sir.

Q. The buildings, wharf and personal property?

A. Yes, sir.

Q. Did you include, or do you include, the property rolled into the river and saved?

A. No, sir; that is not included at all. There was beef rolled into the river which belonged to Hawkins, and that was taken out.

Q. Did you leave Hawkins out?

Ans. Yes, sir.

Q. Do you know the names of the members of the firm of Hawkins?

A. Harry Felt, Horace D. Hawkins, Wm. Van Antwerp.

Q. Do you know the orders Hough gave his watchman about vessels passing?

Ans. Yes, sir.

Q. State them.

A. He gave his watchman orders not to allow any vessel to hitch

50 to the dock unless it was going to load or unload at that packing-house. (See addition 4th.)

Q. State what sort of a shed it was.

A. It was gravel-roofed—fire-proof.

Q. What do you mean by fire-proof?

A. It was a gravel-roofed shed all over. It was supposed to be fire-proof.

Cross-ex. by Mr. Causin.

Q. When was that shed built?

A. It was built before I went to work for Hough.

Q. You found it there?

A. Yes, sir.

Q. How long had you been with Hough prior to the burning?

A. About 11 months I think it was.

Q. You found it there when you went there?

A. Yes, sir.

Q. Was the shed planked?

A. Yes, sir; boarded over.

Q. What kind of boards?

A. Common boards.

Q. Were they pine boards?

A. Yes, sir; I won't be certain.

51 Q. What you mean, then, is, it was boarded over with the gravel on?

A. Yes, sir; gravel and cement.

Q. You do not know how long the roof had been there?

A. No, sir; I don't.

Q. Do you know the constituent portions of the cement they use in a gravel roof?

A. No, sir; I do not know.

Q. Is there any bitumen or resinous matter?

A. I don't know.

Direct ex. resumed.

Q. If the vessel in this case had been moored at the lower part of the dock, would it have been out of the reach of the fire? (See addition 5.)

A. Yes, sir; there was a house there——interrupted.

2d cross-exam'n.

Q. What was the length of the shed? it joined the packing-house, did it?

A. Yes, sir.

Q. What was its length from the place of junction to the dock?

A. It was about 55 feet from the packing-house to the dock; it was about 55 feet, I think.

52 *Direct ex. resumed again.*

Q. Have you ever seen any experiments with these gravel roofs as contra-distinguished from other fire-proof roofs?

A. No, sir; I have not.

Reporter read the previous notes, (to,) who added as follows at the places indicated by the annexed figures:

Additions.

1. In the former case I estimated it by barrels and sacks.
2. Hough & Co. had 40,000 bushels of salt altogether.
3. By "sum total," I mean Watson and Williams's interest was $12,393.

Q. by the court. Did this 500 barrels of beef belong to Watson & Williams?

Ans. Yes, sir; I suppose so.

4. By "vessels," I mean all craft, canal-boats, &c., &c.

Q. by Judge Arrington. How did you come to leave out this salt of Watson's?

Ans. He never asked me, and I understood the Ins. Co.'s were not
53 suring against it. In my first testimony I gave this pork in; it is included.

Q. State what would have been the danger if the vessel had been moored at the lower end of the wharf.

Answer. There was a shed there, a salt-house, and the salt-house and things, worth about $4,000.

Q. Would there have been any danger to the packing-house?

A. No, sir; no danger to the packing-house, only to that.

HOUGH & Co. }
vs. }
W. TRANS. Co. }

Jno. B. Chapin sworn:

Ex. by Mr. Arrington.

Q. State your acquaintance with the south branch of the Chicago river.

A. I have been acquainted with it for 20 odd years; 20 years or more.

Q. Are you acquainted with that portion of it where Hough's premises are situated?

A. I am.

Q. State whether there has been any tow-path used by vessels for towing vessels.

A. For canal-boats?

54 Q. Yes. State, &c.

A. When the canal was first opened in 1848, there was a tow-path used from about Old street, where Old street is, to Bridgeport, on the east side of the river. It was used mostly through 1848; sometimes a portion of it was fenced up. I owned some land there; that tow-path was used in 1848, I believe; perhaps Mr. McGlachin fenced it up. In the spring of 1849 it was abandoned, and we put tugs on, and tugged with them, instead of horses. It was abandoned in 1849.

Q. Has it been used since?

A. Not since the spring of 1849. I used it in the spring of 1849. We then abandoned it, and used tugs afterwards.

Q. by Mr. Hosmer. Did you see this shed and building before they were burned?

A. Not immediately before they were burned.

Q. Did you notice what the shed was covered with?

A. I use pine boards.

Q. Was it gravel roofing?

A. I don't recollect particularly what it consisted of.

55 (Reporter reads the preceding notes aloud.)

Q. Did this tow-path run by the place where Hough's packing-house was?

A. Yes, sir; (to the reporter,) perhaps it was more proper to say the trustees of the I. and M. canal put on the tugs.

The depositions on the part of the libellants, filed in said court in said entitled cause, and read in evidence upon the hearing of the same, are in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

United States district court for the northern district of Illinois.—In admiralty.

O. S. HOUGH *et al.*
vs.
WESTERN TRANSPORTATION COMPANY, *in personam.* } Libel.

It is hereby stipulated and agreed that the said plaintiffs have leave to proceed this day, and so on from day to day, as may suit their convenience, to take the depositions of such witnesses as they may desire, which depositions are to be used on the trial of said cause, with the privilege to said defendant to

56 cross-examine all such witnesses whose testimony may be taken in chief by the said pl'ffs under this stipulation, two weeks from this day; and for that purpose, the commissioner, J. W. Magill, before whom the depositions are to be taken, shall adjourn the further examination of all such witnesses brought before him, until Thursday, the 19th day of Feb'y, 1857, at 10 o'clock a. m.

C. B. HOSMER,
Proctor for Libellants.
HOOPER & CLEMENTS,
Proctor for Resp'd'ts.

Stipulation No. 1.

JNO. W. MAGILL, *U. S. Com'r.*

United States district court, northern district, Illinois.—In admiralty.

O. S. HOUGH
vs.
WESTERN TRANS. CO. }

It is agreed that the deposition of Edward D. Brooks, this day taken in the above entitled cause, may be signed and closed, as though the proctors for the

respondents had been present at the taking thereof, they waiving all objections to it on account of their absence, and waiving a cross-examination of said witness.

HOOKER & CLEMENTS,
Proctor for Resp'd'ts.

Feb. 20th, 1857.

Stipulation No. 2.

JNO. W. MAGILL, *U. S. Com'r.*

57 United States district court for the northern district of Illinois.

O. S. HOUGH *et al.*
vs.
WESTERN TRANSPORTATION CO. } In admiralty.

It is hereby agreed that the deposition of Wm. J. Taylor be taken before J. W. Magill, U. S. com'r, by consent of parties, and that the deposition, when taken, be read on the trial of said cause.

Feb'y 23, 1857.

C. B. HOSMER,
Libellants' Proctor.
HOOPER & CLEMENTS,
Respondents' Proctor.

Stipulation No. 3.

JNO. W. MAGILL, *U. S. Com'r.*

United States district court for the northern district of Illinois.

O. S. HOUGH *et al.*
vs.
WESTERN TRANSPORTATION CO. } In admiralty.

It is hereby stipulated and agreed between said parties, that the said libellants have leave to take the depositions of Frank Lutzen, Jos. H. Lathrop, and F. Bratruty, by consent, before J. W. Magill, U. S. com'r, which depo-
58 sitions, when taken, to be used on the trial of said cause, subject to all legal objections, except as to notice, the said defendant hereby waiving cross-examination of said witnesses.

Dated this 25th February, 1857.

C. B. HOSMER,
Libellants' Proctor.
HOOPER & CLEMENTS,
Proctor for Resp'dts.

Stipulation No. 4.

JNO. W. MAGILL,
U. S. Commissioner.

United States district court for the northern district of Illinois.

O. S. HOUGH *et als.*
vs.
WESTERN TRANSPORTATION CO. } Libel.

It is hereby stipulated and agreed that the depositions of Joseph Morton and John B. Sollett be taken by consent before John W. Magill, U. S. com'r, the defendant hereby waiving cross-examination of said witnesses.

March 18, 1857.

C. B. HOSMER,
Libellants' Proctor.

But reserving the right to call them again before said commissioner, and cross-examine them should it be deemed necessary.

HOOPER & CLEMENTS,
Proctors for Respondents.

Stipulation No. 5.

JNO. W. MAGILL, *U. S. Com'r.*

59 UNITED STATES OF AMERICA, *Northern District of Illinois, ss.*

In district court.

HOUGH & Co.
vs.
THE WESTERN TRANSPORTATION Co. } Libel.

It is hereby stipulated by and between the parties in the above-entitled suit, that the depositions of Capt. A. Rossman and Capt. McHenry may be taken before John W. Magill, esq., U. S. commissioner, on the part of the libellants, defendants waiving the cross-examination of said witnesses, but reserving the right to recall them for cross-examination hereafter.

Chicago, March 23d, 1857.

VAN H. HIGGINS,
Proctor for Libellants.
HOOPER & CLEMENTS,
Proctor for Claim'ts.

Stipulation No. 6.

JNO. W. MAGILL, *U. S. Com'r.*

60 UNITED STATES, *Northern District of Illinois, ss:*

Be it remembered, that on the fifth, sixth, nineteenth, twentieth, twenty-third, twenty-fifth, and twenty-seventh days of the month of February, and that on the sixth, eighteenth, twentieth, twenty-third, and twenty-fourth days of the month of March, in the year one thousand eight hundred and fifty-seven, personally appeared George Scott, Edward D. Brooks, William J. Taylor, Frank Lutzen, Joseph H. Lathrop, Samuel Woodward, Joseph Morton, John B. Sollitt, Alfred W. Rosman, Hiram McHenry, and Theodore Breternitz, before me, John W. Magill, a commissioner appointed by the circuit court of the United States in and for the northern district of Illinois, in the seventh circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, etc., to testify and the truth to say, on the part and behalf of the libellants, in a certain suit or matter of controversy now depending and undetermined in the United States court for the northern district of Illinois, on the admiralty side thereof, wherein O. S. Hough et als. are libellants, and the Western Transportation Company respondents.

61 And the said witnesses, being of lawful age, and having been by me first cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

1. Interrogatory first. What is your name, age, occupation, and residence?

Answer. My name is George Scott; I am thirty-five years of age; I am a butcher by trade, and occasionally act as night watchman; I reside at Bridgeport, in Cook county.

2. Interrogatory second. Are you acquainted with the parties to this suit, and how long have you known them, or either of them?

Answer. I know the plaintiffs a year and four months; I know the defendant, by reputation, about six months.

3. Interrogatory third. State, if you know, whether or not the plaintiffs were last fall, and are now, the owners of any wharf in the south branch of the Chi-

cago river; and if so, how long have they owned and been in possession of the said wharf?

62 Answer. I do. I don't know how long they have owned and been in possession, except so far as I have been with them; during that time they have owned and been in possession of it.

4. Interrogatory fourth. State where said wharf is situated, and who was in possession and use thereof on the 17th and 18th days of October last.

Answer. The wharf is situated on and in front of lots 4 and 5, in block one of the canal trustees' subdivision of section 29 north, range 14 east, on the east bank of the south branch of the Chicago river. The plaintiffs were in possession and use thereof on the 17th and 18th days of October last past.

5. Interrogatory fifth. State whether, or not, there were any buildings and sheds on or near said wharf on the 17th of October last. If so, describe said buildings, sheds, and the value of the buildings, sheds, and wharfs.

Answer. There were sheds and buildings. The buildings consisted of a
63 large stone packing-house, a three-story building, and a brick packing-house, two stories high. There was a shed which extended over the whole of the dock, part of which was used as a salt-house, and part for keeping barrels in and working under it. The shed was built of wood, and one story in height over the dock, and two stories where used for a salt-house. I can't say as to the value of them.

6. Interrogatory sixth. State what business, if any, was carried on at said premises on the 17th of October last.

Answer. The killing, salting, and packing of beef and pork.

7. Interrogatory seventh. By whom was the said business carried on?

Answer. By Hough & Co., the plaintiffs in this suit.

8. Interrogatory eighth. State, if you know, how far said packing-houses stood at that time (October 17th, 1856) from the water's edge, and how far said wharf extended along the bank of said river.

Answer. Sixty feet, I should say, about; I can't say exactly how far the wharf extended along the bank of the river; it extended a long distance.

64 9. Interrogatory ninth. State, if you know, whether said plaintiffs had any personal property on said premises on the 17th and 18th days of October last; and if so, state and describe the same.

Answer. They had beef, packed and unpacked, salt in barrels and in bulk, empty barrels, carts for beef, cleavers, knives, saws, trucks, scales for weighing, and all the implements, fixtures, and tools usually kept and used in a large beef and pork packing establishment. There was a large quantity of beef in barrels and salt in barrels, also empty barrels, on said premises at that time, but I am unable to state the amount.

10. Interrogatory tenth. State whether, or not, said plaintiffs at that time held any beef and pork as bailees for other persons. If so, state, if you know, the quantity they held upon said premises for others.

Answer. They did. I know they held a large quantity of beef for Hawkins & Co., some of which was packed and some unpacked. There was five hundred barrels of pork also held by them for others, which was deposited
65 in the cellar of the stone packing-house. They may have held more beef and pork for other parties, but of that I do not know.

11. Interrogatory eleventh. State in whose employ you were on the 17th of October last, how long you had been in such employ, and how long you had been acquainted with the said premises.

Answer. I was in the employ of Hough & Co., the plaintiffs in this suit; I had been in their employ a year and four months; I have been acquainted with the premises that length of time; my employment being a night watchman during part of the time before stated on said premises, and the whole of that time I was engaged in the said premises.

12. Interrogatory twelfth. State how said wharf of said plaintiffs was used by them during the time you was in their employ as above stated; and was it a private or public wharf?

(The latter part of the interrogatory objected to.)

Answer. They used it for their own business exclusively. It was a private wharf.

66 13. Interrogatory thirteenth. State in what capacity you was employed by the said plaintiffs on the 17th of October last.

Answer. As night watchman.

14. Interrogatory fourteenth. State whether, or not, on the 17th of October last, you saw the propeller Falcon, belonging to the defendant. If so, where did you see her, when, and state all the circumstances under which you saw her at that time.

Answer. I did; I saw her alongside of the plaintiff's wharf; it was about half past eight o'clock of the evening of the 17th of October last; when I first saw her she was dropping down the stream, stern foremost, with her fires up and engine working. They came alongside of the dock, and the steam letting off, I heard the captain or mate give orders to the men to tie up to the wharf. I asked him, the captain or mate, whether he had any salt for Hough & Co., and he said no. I then asked him if he had anything for Hough & Co.; he said no. I asked him if he was going to take any load from Hough & Co., and he said no. He said he had been taking in beef at Hancock &

67 Cragin's. I told him that my orders was, from Hough & Co., that no boat or vessel was to be allowed to tie up at that dock unless she had a load to deliver or to take in at that wharf from Hough & Co. I told him he must not tie up there, but he paid no attention to what I said, and the crew tied the boat there. I then took my lamp and went back into the packing-house on my duty. I walked around the packing-house dock and premises all night, frequently passing along the dock and the buildings. I saw no one appear on board of the propeller after she tied up, as watchman or otherwise. About half past two o'clock in the morning of the 18th, as I was passing along on my rounds, I discovered a light flashing up over the end of the packing-house. I ran through the packing-house on to the dock, and saw the propeller was on fire, the fire coming up just forehead of the smoke-pipe, and near to it, about six or seven feet in height of flame, and about three feet in diameter. I immediately gave an alarm of fire. I hollered fire three or four times. I ran up on the hog-platform and hollered fire four or five times more. I ran down

68 to the boat again, hollering fire, and met a man coming off the boat on the dock. He had an overcoat on his arm, and was dragging a leather trunk after him. He inquired of me the way out, and I said to him to stop and help to put out the fire. He then answered, I want to find the way out of this place. I answered that there was no way out except through the packing-house. He then went through the packing-house, and I saw no more of him. I run in the packing-house and got an axe, and when I got back Joseph Morton was standing on the dock. Joseph Morton caught the axe out of my hand, saying, let us chop the ropes, and he cut them off—the ropes that fastened the propeller to the wharf. Then we saw from six to eight men in the boat. Then Morton called out to them to come back and assist in putting out the fire, and not to let the man's property burn up. Then we saw from 7 to 8 men ashore, on the opposite side of the slough, standing and looking on. The men in the boat would not come back; they made no answer to our calls, but kept rowing on to the opposite side of the river. We then called to the men on the

69 opposite side of the slough, but they paid no attention to our calls, and gave no answer. We called to the men in the boat, and also to those on the opposite side of the slough to bring their boat back and fasten a line to the propeller and haul her into the stream, so as to save the buildings, but they

paid no attention to our calls, but kept rowing right on to the opposite side of the river. The men in the boat, at the time we called out to them to come back with their boat and fasten a rope to the propeller, were not more than forty feet distant from us, and must have heard us. At the time we called to the men in the boat there was no part of the dock or buildings of Hough & Co. on fire, and the fire then had not made such progress on the propeller but that we could have easily fastened a rope to the stern of the propeller and hauled her out into the stream had the men only returned with their yawl-boat. At the time we cut the ropes, as above stated, Solett, Brooks, Lathrop, and Bertinech came on the dock, and we shoved the propeller from the dock as
70 far as we could with our hands, but the wind, blowing against us, drove the propeller back against the dock. We then shoved her off with our hands as far as we could, and then with beef-trees shoved her ten feet or more from the dock, but the wind drove her back against the dock. We then commenced to roll the beef in barrels off the dock into the river, and also empty barrels. We rolled off over fifty barrels of beef, and a large number of empty beef barrels, into the river. We also took beef hams and barrels out of the packing-house, and worked there on the dock, some twenty minutes or more, before the fire caught the building and drove us off.

15. Interrogatory fifteenth. Do you know where Cragin & Co.'s packing-house is situated, where the said propeller Falcon took on part load? If so, state how far the same was from the said plaintiffs'?

Answer. I know where Cragin & Co.'s packing-house is; the distance is about half a mile from the plaintiffs' wharf, up stream.

16. Interrogatory sixteenth. Do you recollect what the weather was
71 on the 17th of October last, as to its being clear or foggy? If so, state.

Answer. It was foggy.

17. Interrogatory seventeenth. Do you recollect whether or not, at this time, it was very foggy? and if so, state whether or not it became foggy very early in the evening.

Answer. It was very foggy at four o'clock in the afternoon of the 17th of October.

18. Interrogatory eighteenth. State whether or not you are acquainted with the south branch of the Chicago river above and south of said plaintiffs' wharf; if so, state the course of said stream; whether straight or winding.

Answer. I am. It is very winding above plaintiffs' wharf, and crooked.

19. Interrogatory nineteenth. State whether or not there is a slip above the plaintiffs' wharf, where said propeller could have easily winded or moored in perfect safety; if so, state, and how far the same was situated above plaintiffs' wharf.

72 Answer. There is a slip; it is about forty rods above the plaintiffs' wharf, where I know of fifteen propellers winding; it is where all the propellers that come to our packing-house wind, and where propellers can lay with perfect safety.

20. Interrogatory twentieth. State, if you know, whether or not there were other places near to the place where said propeller moored that night of the 17th of October, where she could have moored with perfect safety, without being near any buildings, or endangering any one's property; if so, state the same.

Answer. Yes; there was one place about 300 feet east of the plaintiffs' wharf, where there were spiles to which she could have moored with perfect safety, and have laid as safe there as she could at the plaintiffs' dock. She might also have moored with safety on the opposite side of the river, where there were no buildings. She might also have anchored in the middle of the stream with safety; or have gone down to Murray's dock, about 600 feet east of plaintiffs' wharf, where there were no buildings to be endangered by fire.

73 21. Interrogatory twenty-first. How long after you discovered the fire on said propeller was it before the plaintiffs' workmen arrived?

Answer. I should say, within ten or fifteen minutes.

22. Interrogatory twenty-second. How long was it after you discovered the fire, and gave the alarm, before you saw the crew of the propeller?

Answer. I think it was about 20 minutes; I never saw the crew until after Morton came, except one of them, that brought the trunk ashore. The first I saw of the crew were those on the opposite side of the slough, and those rowing off in the yawl-boats.

23. Interrogatory twenty-third. How many men belonging to the crew of said propeller did you see standing on the opposite side of the slough, and in the said yawl-boat?

Answer. About eight men in the boat; and about six or eight, I should think, on the opposite side of the slough.

74 24. Interrogatory twenty-four. State whether or not, after you discovered the crew of said propeller, and called to them to come with their yawl-boat and fasten a rope to said propeller, and haul her out into the stream, there was ample time to do so before the wharf and buildings caught fire.

Answer. Yes, sir; there was plenty of time. When we first called to the boat crew, they were not more than fifteen feet from the propeller, and could easily have turned about and fastened to her and hauled her out in the stream. I should think it was some twenty minutes after this before the wharf and buildings caught fire.

25. Interrogatory twenty-five. State whether or not there was any difficulty or danger, at the time you called to said boat's crew, in fastening a rope to said propeller.

Answer. No, sir; not any danger, on account of the wind blowing the flames towards the buildings, leaving the whole starboard side free from flame, and a line could have easily been attached to her bow or stern.

75 26. Interrogatory twenty-six. State whether or not the crew of said propeller could, at that time, have landed upon the dock, instead of taking to the boat.

Answer. Yes; and a good deal better.

27. Interrogatory twenty-seventh. State whether or not the libellant's men on the dock at that time had any boat, or any means in their possession or reach of fastening a rope to said propeller.

Answer. No, sir; they had no means whatever.

28. Interrogatory twenty-eight. State whether or not said propeller was afterwards hauled out into the stream; and if so, how long after, and how was it done?

Answer. She was hauled out into the stream. I can't say how long after the fire was discovered; I should think it might have been an hour and a half or two hours. I don't know how it was done, as I did not see it, being at work on an engine at the opposite side of the buildings at the time.

29. Interrogatory twenty-nine. State, if you know, whether there had
76 been any fire in any part of said premises on the day or evening of the said 17th day of October.

Answer. No, there was no fire.

30. Interrogatory thirtieth. State whether or not the wharf and buildings of said libellants caught fire from said propeller; and if so, were they and the property thereon consumed and destroyed by the said fire or not?

Answer. Yes; from the propeller. All the property was destroyed, except the barrels we threw into the river, and some barrels, empty ones, that we took out of the cellar.

31. Interrogatory thirty-one. State whether or not there was any property

upon the dock, or wharf, of the said lebellants, on the said 17th of October last; if so, state the kind of property, and how the same was stored on the said wharf.

Answer. There was. There was beef in barrels; it was stored three tier high on said dock, and extended back five or six tiers, and in length something over a hundred feet.

32. Interrogatory thirty-second. How far from the edge of the wharf,
77 where said propeller lay, was the first tier of beef stored on said wharf?

Answer. About two feet.

In accordance with the stipulations of the parties to the aforementioned cause, attached hereto, the further taking of testimony in this cause is adjourned to Thursday, the 19th of February instant.

February 5th, 1857.

THURSDAY, *February 19th*, 1857.

Present: C. B. Hosmer, for libellants; E. R. Hooper, for respondent; witness George Scott.

Examination resumed.

Respondent's proctor declined cross-examination of Witness Scott.

GEORGE his + mark. SCOTT.

JNO. W. MAGILL, *Com's'r.*

Sworn to before me this 19th day of February, A. D. 1857.

JNO. W. MAGILL,
U. S. Commissioner.

1. Interrogatory first. What is your name, age, occupation, and residence?

78 Answer. My name is Edward D. Brooks; I am 24 years of age; I am a clerk in the employ of Hough & Co., in the city of Chicago.

2. Interrogatory second. Are you acquainted with the parties to this suit? If yea, how long have you known them, or either of them?

Answer. I know the libellants; I have been acquainted with them a year and three months. I know that there is such a company as the Western Transportation Company; I have known it 8 months.

3. Interrogatory third. How long have you been in the employ of said libellants, and in whose employ were you on the 17th and 18th days of October last?

Answer. I have been in the employ of the libellants a year and 3 months, and was also in their employ on the 17th and 18th days of October last.

4. Interrogatory fourth. State how, and where, you were employed by the said libellants.

Answer. I was employed by them as clerk at their packing-house,
79 during the packing season, to look after things there, and keep the books, and pay the help.

5. Interrogatory fifth. State where the said libellants' packing-house was situate.

Answer. On the south branch of the Chicago river, upon their wharf, located on and in front of lots 4 and 5, in block 1, in the canal trustees' subdivision of section 29 north, range 14 east, on the east bank of the south branch.

6. Interrogatory sixth. State who was in possession of said packing-house and wharf on the 17th and 18th days of October last, and what business, if any, was then being carried on there, and by whom.

Answer. Hough & Co. were in possession of said packing-house and wharf on the said 17th and 18th days of October last. They were then carrying on the business of packing beef.

7. Interrogatory seventh. Describe, if you know, the buildings and sheds on said wharf then used by the said libellants for carrying on their said
80 business, and the value of the said buildings and wharf at that time.

Answer. There was two buildings—one of stone and one of brick. The stone building was 140 by 60 feet, three stories high, and used for a packing-house. It was about sixty feet from the water's edge, and joined the shed, which covered the dock. The brick building was about 40 by 100 feet, two stories high, and joined by an arch or platform with the stone building, and fronted on the river on a line with the stone building, and was also used for a packing-house. The wharf extended on the river 470 feet, and was between 50 and 60 feet in width, and was covered, in part, by a shed 200 feet long, 50 feet in width, and one story high, about fifteen feet in height at one end, and from nine to ten on the other. The highest part of the shed was where it joined the packing-house. The value of said buildings and shed, on the 17th of October last, was $24,000. The wharf, as it then stood, I should think was worth about three thousand dollars.

8. Interrogatory eighth. State at what time the packing season com-
81 menced last fall, and how long the said libellants had been engaged in packing when their property was destroyed by fire.

Answer. The packing season generally commences about the first of October. They commenced to pack on the 3d of October, and their packing-houses were destroyed by fire on the morning of the 18th of October.

9. Interrogatory ninth. State, if you know, whether or not the said libellants had made arrangements, and were prepared at the time their packing-houses were destroyed, as above, to do an extensive business in the packing line last fall, or not.

Answer. They were. They had made heavy contracts for pork, to be delivered during the month of November last; and were then, at the time of the fire, largely engaged in killing and packing beef on commission.

10. Interrogatory tenth. State what was the effect, if any, to the said libellents' packing business last fall by the destruction of their packing-house by fire on the morning of the 18th of October last.

82 Answer. It threw them out of the best part of the season for packing beef, and injured very much their pork-packing season last fall, as it was impossible for the libellants to erect suitable buildings and make preparations to carry on their said business in time for the packing season.

11. Interrogatory eleventh. State, if you know, the damage sustained by the said libellants in their said business by the destruction of their packing-houses and property by fire on the morning of the 18th of October last.

Answer. They were injured to the amount of fifteen or twenty thousand dollars.

12. Interrogatory twelfth. Do you know whether or not the said libellants had any personal property on their said premises at the time of the fire, on the morning of the 18th of October last? If so, state the same and its value, and what became of it.

Answer. I do. They had personal property on their premises at that
83 time, such as tubs, blocks, beef-trees, axes, knives, cleavers, scales, carts, a steam-engine, and all the tools and implements usually used in a packing and slaughtering establishment, worth at that time about twenty-five hundred dollars, and which were destroyed by fire on the morning of the 18th of October last. The said libellants also had, at that time, in their said packing-houses and on their dock, part belonging to them and part which they held as bailees for others, six hundred barrels of pork, and about 1,600 barrels of beef, which was destroyed by said fire on the morning of the 18th of October last, and which was then worth about $32,000.

The said libellants also had, at that time, on the shambles 121 head of cattle,

which were destroyed by said fire on the morning of the 18th of October last, and which were worth at that time $3,309.

The said libellants also had, at that time, on their premises, and which were destroyed by the said fire, 121 hides, worth $800; also, 1,000 tierces and 9,500 barrels, all of which were empty, on their said premises, and which were destroyed by the said fire, and were worth the sum of $11,000.

84 They also had, at that time, about 40,000 bushels of salt then on their said premises, worth about $20,000; also, 2,500 sacks of salt then being on said premises and injured by said fire, and worth about $4,500. The said salt was injured by said fire about $10,000.

13. Interrogatory thirteenth. Were you, on the 17th of October last, acquainted with the docks on the banks of the Chicago river and its branches? If so, state how the docks on said river and its branches were then kept.

Answer. I was. Some of them were public, and some private docks.

14. Interrogatory fourteenth. State how said libellants' dock was kept and used by them during the time you have been in their employ.

Answer. It has been kept as a private dock, and used by them exclusively for their own business.

15. Interrogatory fifteenth. Have you ever seen the propeller Falcon, belonging to the said defendant? If so, state when you last saw her, where, and all the circumstances under which you saw her at that time.

85 Answer. I have seen said propeller. The last time I saw her she was lying at Hough & Co.'s dock; that was on the morning of the 18th of October last. Her bow was up the river. I saw her in the afternoon of the 17th backing down the river from Cragin & Co.'s packing-house. When I saw her on the morning of the 18th she was on fire. When I got there the ropes that moored her to the dock had been cut. I said to the men there, "Let us shove her off." We shoved her off from the dock about three feet with our hands, but the wind blowing strong from the north against us brought her back again against the dock. We then went into the packing-house and got some beef-trees and shovers, and shoved her off again with our shovers about eight or ten feet. Then she blew back against the dock again, and we then shoved her off again; but the wind blew her back. The shed soon after caught on fire, and the heat drove us away from the propeller. We then threw off into the river barrels of beef. We then went to work at the lower end of the shed and in the

86 brick house, saving what barrels of beef and empty barrels we could, until the fire drove us away. At the time the shed caught fire I sent off two teams after fire-engines. When they arrived there the brick house and stone house were on fire, and they were unable to save those buildings, and the fire-engines were used to prevent the fire from burning the staves and cooper shops, which were very valuable, and worth from 12,000 to 15,000 dollars. There was no one of the crew of the propeller present, at the time of the fire, to aid in extinguishing the fire or in saving the property. Had the crew of the propeller aided us in the commencement of the fire—before the shed caught fire—as they might easily have done, we could have shoved the propeller into the middle of the stream, or on the opposite side of the river, and saved the buildings, and all the property on the dock, and the libellants would have sustained no damage by the fire. There was ample time—some fifteen to twenty minutes after I got on the ground—before the fire from the propeller caught the

87 shed, in which, had we had a boat to have fastened a line to the propeller, we could have hauled her out away from the libellants' dock, and beyond the reach of danger to the libellants' property. We sent after a small boat as soon as we could, but too late to save the libellants' buildings and property, and fastened a rope to the propeller and towed her into the stream, and a tug coming along, fastened to her, and towed her up the stream a short distance, where she sunk and now lies.

16. Interrogatory sixteenth. Do you know where Cragin & Co.'s packing-house is situated on the river, and how far up from the libellants' dock?

Answer. I do know; it is situated up the stream, about half a mile from the libellants' dock.

17. Interrogatory seventeenth. Do you recollect what the weather was on the 17th of October last?

Answer. I do; it was very foggy.

18. Interrogatory eighteenth. At what time in the afternoon of the 17th
88 of October did you see said propeller backing down the stream, and what was the state of the weather at that time?

Answer. It was between four and five o'clock in the afternoon of the 17th. The weather was very foggy.

19. Interrogatory nineteenth. State, if you know, whether or not it was usual or prudent for a propeller to go down the stream in such weather as it was on the afternoon of the 17th of October last.

Answer. It was not usual, and it was very imprudent, and I was surprised to see the propeller coming down below the slip without winding. When I first saw her she was above the slip, and I thought she intended going in there to wind, as that was the place where propellers usually winded.

20. Interrogatory twentieth. State, if you know, whether or not there were any good places between Cragin & Co.'s dock and the libellants' dock where said propeller might have moored with safety without endangering the property of any one?

Answer. There were several. She might have moored between Moore
89 & Seavern's and Brown's docks, where there were no buildings, and within half a mile of libellants' dock; also just below Brown's packing-house there is a dock she might have moored at with perfect safety where there were no buildings or property. She might also have moored in the slip, about 800 feet from libellants' dock, and endangered no one's property. Indeed, there were numerous places on said stream, near to the libellants' dock, where she might have moored without endangering the property of any person.

21. Interrogatory twenty-first. Are you acquainted with the course of said stream above the said libellants' dock? If so, state whether the same is straight or winding.

Answer. I am. The river is winding and very crooked between the libellants' dock and Cragin & Co.'s packing-house.

22. Interrogatory twenty-second. State whether or not the libellants' men on the dock, at the time of the fire, had any boat or any means within their reach whereby they could have fastened a rope to the said propeller before the
90 buildings caught fire.

Answer. They had not.

23. Interrogatory twenty-third. State, if you know, whether or not there had been any fire on said premises of said libellants on the day or evening of the 17th of October last.

Answer. There was none.

24. Interrogatory twenty-fourth. State how the said wharf and buildings of the said libellants caught fire, and whether or not they were destroyed, and how destroyed.

Answer. They caught fire from the propeller Falcon, and the buildings and most of the property therein, and the property on the dock, were consumed by said fire.

25. Interrogatory twenty-fifth. State whether or not there was property on the said dock at the time of said fire; and if so, how it was stored thereon.

Answer. There was property, about 1,600 barrels of beef, 1,400 empty pork barrels, about 2,500 sacks of salt, and about 20,000 bushels of salt. The
91 beef was piled up in tiers, three tiers high, and extending back from the

front six or seven tiers, and in length about one hundred feet. There was also some piled the other way of the dock.

26. Interrogatory twenty-sixth. State how far from the edge of the wharf where said propeller lay was the first tier of beef stowed on said dock.

Answer. About two to two and a half feet.

27. Interrogatory twenty-seventh. At the time said propeller was towed out into the stream by libellants' men, state whether or not most of her cargo was in the hold.

Answer. The cargo she brought at the time she was moored consisted of wheat—which was in her hold—and beef; and the beef, if stowed on the deck, would fall through into her hold as the fire progressed, so that most of her cargo must have been in the hold at the time we towed her out into the stream.

Interrogatory twenty-eighth. State what progress the fire had made on said propeller at the time the libellants' men shoved her off from the dock,
92 as previously stated by you.

Answer. There was but very little fire on the propeller over the boilers. At the time we shoved her off a man might have gone fore and aft on her without danger at that time.

EDWARD D. BROOKS.

Sworn to before me this 21st day of February, A. D. 1857.

JNO. W MAGILL, *U. S. Commissioner.*

1. Interrogatory first. What is your name, age, occupation, and residence; and are you acquainted with the parties to this suit?

Answer. My name is William J. Taylor; I am 32 years of age; I am at present engaged in excavating, and have charge of a dredging machine; I reside in Chicago; I am acquainted with the libellants; I know there is such a company as the Western Transportation Company.

2. Interrogatory second. Do you know of the propeller Falcon burning up last fall? If so, state where she was at the time of the fire, and whether or
93 not you were present.

Answer. I know of her burning up last fall, about the middle of October, on a Saturday morning. She lay at Hough & Co.'s dock. She was moored to the dock. I was present at the fire, but not at the commencement.

3. Interrogatory third. State how far the fire had progressed at the time you arrived, and all the particulars of said fire, so far as you know or saw.

Answer. I could not tell exactly. The propeller and the buildings were both in flames when I arrived there. I came there with my small boat about four o'clock in the morning, and fastened a line which I had brought with me to the stern of the propeller, and, with the assistance of six or eight men with me, we hauled the stern of the propeller into the stream, so that she touched the opposite bank. A tug came along then, and hitched on to her, and hauled her up the stream, where she sunk.

4. Interrogatory fourth. State how long you were employed in fasten-
94 ing the rope to the propeller and hauling her into the stream.

Answer. I should judge we were about half an hour.

5. Interrogatory fifth. State whether or not said propeller, at the time you hauled her into the stream, was or not heavily loaded, and what did her cargo consist of, and where was it.

Answer. I don't think she was very heavily loaded from all appearances. Her cargo consisted of packed beef and wheat. I should judge the cargo was in the hold. It was there when I saw it.

6. Interrogatory sixth. State whether or not, from what you saw, and from the appearance of the propeller at that time, any of her cargo had been consumed at the time you hauled her out into the stream.

Answer. I don't think there had, anything to speak of any way. The wheat was stowed in the hold, and the beef, whether stowed in the hold or on deck would fall into the hold as the fire consumed the upper works. Besides, I saw a large quantity of beef in the hold with the wheat after we had
95 hauled her out. Her two engines were also in the hold, also all her machinery.

7. Interrogatory seventh. State whether or not there would have been as much difficulty in hauling said propeller out into the stream at the commencement of said fire, or soon after its commencement, as there was at the time you hauled her out.

Answer. I don't think there would have been as much difficulty. I think I could have hauled her soon after the commencement of the fire, with the same number of men, across the river in one-half the time that it took us to haul her out at the time we did, for the reason that we could have used the capstan and worked on the propeller, instead of working on the mud on the bank of the river, where a few days before I had been dredging there, and the mud was 8 or 10 feet deep on the bank, so that it was very difficult working there.

8. Interrogatory eighth. Are you acquainted with the south branch of the Chicago river? If so, state how the channel of the same is.

Answer. I am acquainted with the south branch of the Chicago river,
96 having been employed in dredging it in the neighborhood of four years. The channel is very crooked.

9. Interrogatory ninth. Do you recollect what the weather was before the day of the said fire?

Answer. I think it was very foggy.

10. Interrogatory tenth. State, if you know, what the practice is among captains of propellers about winding their boats in coming down said stream.

Answer. It is the practice among all the captains to wind their propellers at the first opportunity in coming down said stream so as to come down bow foremost.

11. Interrogatory eleventh. Did the said propeller have a place to wind before she came to the libellants' dock, where she moored? And if so, state whether or not the said captain was guilty of negligence in not winding when he had an opportunity.

Answer. She had a place above the libellants' dock to wind, and the only place to wind in that vicinity. I should say the captain was guilty of
97 negligence in not winding there.

12. Interrogatory twelfth. Were there any other places in the neighborhood of libellants' dock where said propeller might have moored at that time without endangering the property of any one?

Answer. Yes, sir; there were several places.

13. Interrogatory thirteenth. State whether or not it was prudent for a captain at that time to have started his propeller to come down said stream stern foremost.

Answer. I should not think it was prudent for a captain to start his propeller late in the afternoon in very foggy weather, as it was then, to come down the river stern foremost.

WM. J. TAYLOR.

Sworn to before me this 23rd day of February, A. D. 1857.

JNO. W. MAGILL, *U. S. Com'r.*

98 1. Interrogatory first. What is your name, age, occupation, and residence; and are you acquainted with the parties to this suit?

Answer. My name is Frank Lutzen. I am 24 years of age. I am a teamster by occupation. I reside at Bridgeport, in Cook county. I know the libellants. I don't know the respondents.

2. Interrogatory second. Do you know of the propeller Falcon burning up last fall? If so, state where she was at the time of the fire, and whether or not you were present.

Answer. I know of the propeller Falcon's burning up last fall. It was on a Saturday morning in October; I don't remember the day of the month. The propeller lay at the dock of Hough & Co. I was present at the fire, but not at the commencement.

3. Interrogatory third. State how far the fire had progressed when you arrived, and all the particulars of said fire, so far as you know.

Answer. The fire had got well under way on the boat when I got
99 there. I went into the packing-house and got an axe, and went chopping the ropes that fastened the propeller to the dock. I with the other men shoved the boat off from the dock with our hands, but the wind blew her back again. Then we got beef-trees and shoved her off again about eight or ten feet, but the wind drove her back again. Then I went down town for the fire-engines. When I came back, after about three-quarters of an hour, I found the buildings all on fire. It was then too late to save the buildings; threw water on the staves, cooper-shop, and lard-room, and saved the staves and cooper-shop, but could not save the lard-room.

4. Interrogatory fourth. Had the fire caught the buildings on the dock at the time you arrived?

Answer. It had not.

5. Interrogatory fifth. State how long after your arrival was it before the fire caught the buildings and the dock.

Answer. From ten to fifteen minutes, I should think.

6. Interrogatory sixth. How many men were there upon the dock
100 when you arrived?

Answer. Eight or ten persons, about.

7. Interrogatory seventh. State whether or not, when you first arrived, if you and the men there had had a boat, so that you could have fastened a line to the said propeller, you could or not have hauled her out in the stream in time to have saved the building and property on the dock.

Answer. We could.

8. Interrogatory eight. Did you see any of the propeller's crew at said fire?

Answer. I did not.

9. Interrogatory ninth. Do you recollect how the weather was about the time of said fire?

Answer. I do. It was very foggy, and had been so for several days before and after said fire.

10. Interrogatory tenth. State how long you have been acquainted with the libellants, and have known their dock.

101 Answer. I have been well acquainted with the libellants for three years past, having been most of that time in their employ, and I have known their dock ever since it was built.

11. Interrogatory eleventh. State how said dock has been used by the libellants ever since it was built.

Answer. It has been used by them exclusively for their own business.

F. LUTZEN.

Sworn to before me this 25th day of February, A. D. 1857.

JNO. W. MAGILL, *U. S. Com'r.*

1. Interrogatory first. What is your name, age, occupation, and residence; and are you acquainted with the parties to this suit?

Answer. My name is Joseph H. Lathrop. I am about thirty-three years of age. I am foreman of Hough & Co.'s pork-house. I am well acquainted with

the libellants. I know there is such a company as the Western Transportation Company.

2. Interrogatory second. State in whose employ you were in October
102 last, and in what capacity, and where employed.

Answer. I was in the employ of Hough & Co., the libellants in this suit. I was foreman of their packing-house. I was employed at their packing-house on the south branch of the Chicago river.

3. Interrogatory third. State what kind of a packing establishment the said libellants had about the middle of October last, and were they or not then prepared to do a large business in the packing line.

Answer. They had a large beef and pork packing establishment, capable of killing and packing one hundred and fifty head of cattle and five hundred hogs per day, and of packing the same per day. About the middle of October they were prepared with every convenience to do a large packing business, and had then just fairly commenced the fall packing.

4. Interrogatory fourth. State whether or not said libellants had, at that time, a wharf; and if so, how was the same used?

103 Answer. They had it extended the whole length of their packing-houses in front, on the river, and was connected with the said buildings, and used by the said libellants exclusively in carrying on their said packing business.

5. Interrogatory fifth. State whether or not said libellants had, at the time aforesaid, any personal property on their said premises; and if so, of what did it consist, and the value of the same?

Answer. They had a large amount consisting of beef, pork, salt, hides, empty barrels, and tierces, and all the tools necessary for carrying on a packing establishment. I don't know the value of the whole.

6. Interrogatory sixth. State whether or not said buildings, wharf, and personal property of said libellants were destroyed; and if so, how, and when?

Answer. They were destroyed by fire that took from the propeller Falcon that burned up at their wharf on the morning of the 18th of October, 1856.

7. Interrogatory seventh. Were you present at said fire; and if so,
104 state all the particulars you know concerning said fire.

Answer. I was present at said fire; I came on the dock between two and three o'clock in the morning, I should judge; the propeller was then on fire. Some of the other men that were there got an axe from the packing-house and cut her ropes that she was made fast with to the dock, and made efforts to shove her off from the dock. We shoved her off as far as we could with the poles or sticks that we had, then the wind would blow her back to the dock. We shoved her off two or three times in that way; then seeing it was useless to try to keep her away, we abandoned the idea, and worked as hard as we could saving personal property. We worked, I should judge, until near four o'clock in the morning. I then went down the river to Sherman, Bay & Co.'s dredging machine, and got Mr. Taylor, with a small boat and line, to come up and assist us in pulling the propeller across the river. We made a line fast to her stern, and took 8 or 10 men to the opposite side of the river, and hauled her stern to the other side. About this time there was a tug-boat came up the
105 river and assisted us in getting her bow over. I went to work on the fire-engines shortly after this.

8. Interrogatory eighth. State whether or not any of the propeller's crew were at said fire.

Answer. There were none.

9. Interrogatory ninth. State whether or not there was any difficulty in said propeller's crew getting on to the dock from the said propeller at the time of said fire.

Answer. There was not. It would have been the easiest way for the propeller's crew to have left her.

10. Interrogatory tenth. How long were you employed in fastening the rope to said propeller and hauling her into the stream?

Answer. I should think about half an hour.

11. Interrogatory eleventh. State whether or not, at the time you hauled said propeller into the stream, much of her cargo had been consumed, and was she then or not much lighter than she was at the commencement of said fire.

106 Answer. There had not been much of her cargo consumed at the time we hauled her out, and she could not have been much, if any, lighter than she was at the commencement of the fire. Her cargo consisted of beef, and wheat was then in her hold, together with her engine and machinery. All that had been consumed, apparently, was the upper works of said propeller.

12. Interrogatory twelfth. State whether or not there would have been as much difficulty in hauling said propeller into the stream at the time you first arrived at said fire as there was at the time you hauled her out.

Answer. I think there would not have been as much difficulty in hauling said propeller into the stream, soon after the commencement of the fire, as there was when we did haul her out, because we could then have worked on the bow, and have used her capstan, instead of working in the mud on the shore, and we could then have hauled her out into the stream in half the time it took us to haul her out when we did.

107 13. Interrogatory thirteenth. State whether or not, at the time you arrived at said fire, if you and the men there had then had a small boat, so that you could have fastened a line to said propeller, could you or not, with the men there, have hauled said propeller into the stream; and if so, how long would it have taken?

Answer. We could have hauled the propeller at that time into the stream had we only had a small boat. It would probably have taken us fifteen or twenty minutes to do it, but it could have been done in time to have saved the buildings and property.

14. Interrogatory fourteenth. At the time you arrived at the fire were any of the crew of the propeller on board of her?

Answer. There was not.

15. Interrogatory fifteenth. State how long you had been acquainted with the wharf of said libellants, and how had it been used since you had known it?

Answer. I have been acquainted with the libellants wharf three years;

108 and during my acquaintance with it, it has been used as a private dock, the libellants using it exclusively for their own business.

16. Interrogatory sixteenth. State whether or not libellants had any property on their said dock before and at the time of the fire; and if so, what was it, and how was it stored thereon?

Answer. They had property on the dock before and at the time of the fire. It consisted of beef packed in barrels, empty packing barrels, and salt. The barrels of beef and empty barrels were stowed in tiers on the dock.

17. Interrogatory seventeenth. How far from the edge of the dock was the first tier of barrels?

Answer. I should say it was something over two feet.

18. Interrogatory eighteenth. Do you recollect how the weather was on the 17th of October last?

Answer. I do recollect; it was foggy, especially towards night.

109 Interrogatory nineteenth. Are you acquainted with the channel of the south branch? and if so, state if you know whether or not it is difficult to navigate the same.

Answer. I am well acquainted with said channel; it is very crooked and difficult to navigate in the night, or during foggy weather.

20. Interrogatory twentieth. State whether or not it was prudent for the captain of the propeller Falcon to leave her moorings as late as five o'clock in the afternoon of the 17th of October, 1856, to come down said stream.

Answer. I should say it was not; because it was very foggy at that time, and the channel was very crooked.

JOSEPH H. LATHROP.

Sworn to before me this 27th day of February, A. D. 1857.

JNO. W. MAGILL, *U. S. Com'r.*

110 1. Interrogatory first. What is your name, age, occupation, and residence?

Answer. My name is Samuel Woodward; I am 31 years of age; I am a laborer by occupation; I reside at Bridgeport, in Cook county.

2. Interrogatory second. Do you know of the propeller Falcon burning up last fall? If so, state when and where she was at the time of the fire, and whether or not you were present.

Answer. I know of the propeller Falcon burning up last fall; I can't tell exactly the day; it was about three o'clock in the morning when I got there; the propeller was then lashed to Mr. Hough's dock; I was present at the time of the fire.

3. Interrogatory third. State how far the fire had progressed at the time you arrived, and all the particulars of said fire, so far as you know.

Answer. I was just coming on the sheds, and near to the buildings;

111 I was one of the men who lashed a line to her and pulled her out into the stream; this was the last thing I did there. When I first got there I begun to carry empty barrels off the dock; and afterwards went into the building to get some from there, but the fire was raging so bad we could not stand it; we then tried to get all we could off the dock; we then tried to push her out into the stream; it was then about four o'clock in the morning, as near as I can guess; then we fastened a line to her wheel, and went to the other side of the river and pulled her over.

4. Interrogatory fourth. State, if you know, what time it was when you arrived at the fire.

Answer. As near as three o'clock, sir, that I could guess.

5. Interrogatory fifth. State whether or not you pushed said propeller from the dock; and if so, the reason why you found it useless.

Answer. We did push said propeller a little from the dock, but she drifted back again, the wind being against us.

112 6. Interrogatory sixth. Did you, during said fire, see any of the crew of said propeller; and if so, where were they, and what were they doing?

Answer. I saw two of them up the road that goes from the Archer road to Hough & Co.'s packing-house, about 200 yards distant from the fire; they were walking about with their hands in their pockets; I afterwards saw one down against the creek; he asked me if I had an axe to lend him; I told him I had not; he was not doing anything; he was just standing there; that was all of the crew that I saw.

7. Interrogatory seventh. About what time was it that you saw the three men of the propeller's crew mentioned by you in your last answer?

Answer. It was just before we had taken the propeller out into the stream.

8. Interrogatory eighth. Were any of the officers or crew of the said propeller present at said fire?

113 Answer. They was'nt; only these three, sir, that I saw at a distance off; they were not near the fire.

9. Interrogatory ninth. State whether or not the persons present at said fire had any small boat there, and whether or not a line could be fastened to said propeller without having a boat.

Answer. There was none beside the boat we borrowed that I saw; we could not have fastened a line to the propeller without a boat.

10. Interrogatory tenth. Did you, or some of the persons present, send after a small boat; and if so, how far did you go for it; and how long after you got it did it take you to haul said propeller into the stream?

Answer. Yes, I guess some of them did; the man that works the dredge brought a small boat there; I think the distance that they went for the small boat was a quarter of a mile; I should say it took us from 30 to 40
114 minutes to haul the propeller into the stream after we got the small boat.

11. Interrogatory eleventh. State whether or not at the time you hauled said propeller into the stream you labored under any disadvantage; and if so, what?

Answer. We did: we had to work in the mud and dirt; and besides, it was very hard to get her round; the dredge had been throwing mud on the bank a little while before; the mud was quite soft.

Cross-examined.

1. Cross-interrogatory first. Where were you, and how far were you from the two men you saw up the road at the time you mention?

Answer. I was coming on the road, and passed them by at the time.

2. Cross-interrogatory second. How do you know that they were of the crew of the propeller?

115 Answer. Why, they were discoursing together, and talking about all their clothes being burnt up.

3. Cross-interrogatory third. Was it before or after you had been to the fire that you saw them?

Answer. It was just after I had been to the fire; I had run down there and worked about half an hour.

4. Cross-interrogatory fourth. Were they walking fast or slow?

Answer. They were walking slow.

5. Cross-interrogatory fifth. Were they going to or from the fire; if not, in what direction were they going?

Answer. They were going straight down the road to the river.

6. Cross-interrogatory sixth. How do you know there were not any of the officers and crew of the propeller at the fire?

Answer. I did not know; I did'nt notice any of them there.

116 7. Cross-interrogatory seventh. Would you have known them if you had seen them?

Answer. I don't think I would; I would not know them if I had seen them; there is no use telling a lie about it.

8. Cross-interrogatory eighth. Would you have recognized the two men you saw on the road at the fire if you had seen them there; and could you recognize them now if you were to see them?

Answer. I should have recognized them at the fire if I had seen them there; I would recognize them now if I were to see them.

Re-examined.

1. Interrogatory first. State whether or not you cannot recognize a sailor when you see him, by his appearance and dress.

Answer. Yes, sir; I generally can recognize a sailor from his appearance and dress.

2. Interrogatory second. How many persons were there present at said
117 fire, and did you or not recognize any sailors among them?

Answer. There were a good many persons present. There was 30 or 40 persons when I got there; I did not recognize any sailors among them.

3. Interrogatory third. State whether or not, if there had been any sailors present at said fire, you would or not have been likely to have noticed them?

Answer. I would, sir.

Re-cross-examined.

1. Re-cross-interrogatory first. How were those two men dressed that you saw on the road?

Answer. One of them had a sort of a blue jacket and blue cap on, and the other had an old and snuff-colored coat coming way down to his knees.

2. Re-cross-interrogatory second. Were they dressed as sailors generally dress?

Answer. One was rather dressed like a sailor; the other was not.

118 3. Re-cross-interrogatory third. Was one a tall man and the other a short man?

Answer. One was tall, and the other short.

4. Re-cross-interrogatory fourth. Did they speak English plain, or with a foreign accent?

Answer. The one that was talking about his clothes spoke English plain, but I did not hear the other speak.

Examination in chief.

1. Interrogatory first. Did the two men that you saw, above referred to, have the appearance and gait of sailors or not?

Answer. Well, as much as I could see of them, I think they did.

his
SAMUEL × WOODARD.
mark.

Sworn to before me this 6th day of March, A. D. 1857.

JNO. W. MAGILL, *U. S. Com'r.*

119 1. Interrogatory first. What is your name, age, occupation and residence and are you acquainted with the parties to this suit?

Answer. My name is Joseph Morton; I am thirty-two years of age; I reside at Detroit, Michigan; I am a cooper by occupation; I know the respondents by reputation only; I am well acquainted with the libellants.

2. Interrogatory second. Where were you, and what was your employment, during the month of October last?

Answer. I was working for Hough & Co. making barrels, at Bridgeport, on their premises.

3. Interrogatory third. State, if you know, whether or not the plaintiffs, Hough & Co., were, during time, the owners of any wharf on the south branch of the Chicago river?

Answer. They were.

Interrogatory fourth. Describe the location of the wharf.

120 Answer. It was on the south branch of the Chicago river, and known as Hough's place.

5. Interrogatory fifth. State, if you know, whether Hough & Co. were in the possession and use of said wharf on the 17th and 18th days of October last, and what buildings, if any, were situated upon said wharf?

Answer. They were; there was a two-story stone building, and a one-story brick building with a cellar, and a shed in front of these buildings, running to the dock, situated upon said wharf.

6. Interrogatory sixth. What business was carried on at that place on the 17th of October last, and by whom?

Answer. Provision-packing, and by Hough & Co.

7. Interrogatory seventh. Do you know whether the libellants had any property other than the buildings and wharf on said premises at that time; and if so, state what, and in whose possession?

121 Answer. They had quite a large quantity of beef and pork; also barrels and pork and a large quantity of salt, all in their possession.

8. Interrogatory eight. State if, on the 17th and 18th days of October last, you saw the propeller Falcon; if so, state where, and under what circumstances you saw her, and tell all you know in relation to said propeller.

Answer. I saw her first on the morning of the 18th at Hough & Co.'s wharf; it must have been between one and two o'clock in the morning. She was on fire, and she was made fast to the wharf. The fire was round her smoke-stack when I saw it first. She was fastened to the wharf by a bow and stern line, and also by a line in the middle; she was on fire at this time, and the fire was confined immediately near to the smoke-stack. I took an axe out of the watchman's hands, and cut the ropes that fastened the propeller to the dock, and got some hands to shove her off. The men were coming on the
122 dock at this time. They were all Hough & Co.'s men. We pushed her stern off ten feet from the dock; then we went to the bow. Then saw the crew of the propeller outside of her in the river; they were in their small boat. I asked them why they did not cut the vessel loose, and shove her down the river, and not burn the man's property all up. They would not answer me. I called to them the second time that I had cut the vessel loose, and to come and help to shove her off into the stream; they made no answer to me, but rowed on to the point on the opposite side of the slough from the packing-house, where they landed, some of them staying in the small boat. I saw no more of the crew after that, and some more of Mr. Hough's men coming down, we went to shoving the propeller out in the stream again; we kept shoving her off until the shed in front of the wharf, and extending over it, caught fire; the wind blowing hard from the northwest, blew her back continually on the dock, and finally set the shed on fire. The wharf is on the south side of the river.
123 We then went to work, saving all the property we could. I was brought on to the dock by Mr. Hough to shove the propeller down the stream, to keep her from burning the wharf. This was between two hours and a half and three hours from the time that I first came. We went and fastened a line to her stern, and took it to a tree on the opposite side of the river, and succeeded in pulling her over, when a tug came up the river and hitched on to her and took her up stream. At this time the buildings, shed and dock, and all that was in the buildings and on the dock, save what was thrown in the river, was burnt and destroyed. The wharf was also burnt considerably and yet burning.

9. Interrogatory ninth. State how the weather was on the morning of the 18th of October, A. D. 1856.

Answer. It was very dark and foggy.

10. Interrogatory tenth. Was there any light about the boat, save the fire, when you saw her?

124 Answer. Not any, but where she was on fire.

11. Interrogatory eleventh. How long after you arrived at the wharf was it before you saw any of the crew of the Falcon?

Answer. Some ten minutes.

12. Interrogatory twelfth. What was the condition of the propeller in relation to the extent of the fire when the crew of her left in the small boat?

Answer. At the time that I saw them one-third of the deck was covered with flames—the upper deck.

13. Interrogatory thirteenth. How far was the small boat from the propeller when you first saw it?

Answer. About twelve feet from her bow.

14. Interrogatory fourteenth. When you first reached the propeller was the fire forward of the foremast, and in the vicinity of the capstan?

125 Answer. It was not, nor in the vicinity of the capstan.

15. Interrogatory fifteenth. Did you, at that time, see any persons on board the propeller?

Answer. Not any that I saw.

16. Interrogatory sixteenth. How many men were in the boat when you saw her, and did you see any others of the crew of said popeller at that time?

Answer. There must have been six in the boat when I first saw them, and there were six or eight on the point across the slough from the dock.

17. Interrogatory seventeenth. How far was it from the wharf where the propeller laid at that time, across the slough, to the point where you saw the balance of the crew?

Answer. About five rods.

18. Interrogatory eighteenth. How far were you from the men in the
126 boat at the time you called to them to come and help to shove off the propeller?

Answer. Inside of two rods, or about thirty feet.

19. Interrogatory nineteenth. Was there much noise about the wharf and boat at that time, and did you call to them in a loud tone of voice?

Answer. There was no noise, except from the fire on the propeller; I called quite loud to them.

20. Interrogatory twentieth. Would there have been any difficulty in attaching a line or lines to the propeller, and carrying them across to the opposite side of the river, at the time you first saw the crew?

Answer. There would not have been any.

21. Interrogatory twenty-first. Would the men on the wharf, at the time you saw the part of the crew in their small boat, together with those of the
127 crew that you saw at that time, have been sufficient to haul the propeller to the opposite side of the stream?

Answer. They would, if we had a line.

23. Interrogatory twenty-second. Was there anything to which a line could have been fastened on the opposite side of the river?

Answer. There was a tree, and also spiles, to which a line could have been fastened.

24. Interrogatory twenty-fourth. How long would it have taken you to run a line from the propeller to the opposite shore if you had had a boat?

Answer. It would not have taken over ten minutes.

25. Interrogatory twenty-fifth. How far was it from the outside of the propeller to the opposite shore?

Answer. About one hundred and twenty-five feet.

26. Interrogatory twenty-sixth. How long was it, after your arrival at
128 the wharf, before it would have been dangerous for men to have worked at the capstan of the propeller?

Answer. They could have worked twenty-five minutes with perfect safety, and then have saved themselves easily.

27. Interrogatory twenty-seventh. How many men were employed in hauling the propeller across the river at the time she was finally taken away from the wharf?

Answer. There must have been as many as fifteen men.

28. Interrogatory twenty-eighth. Was there any other small boat, at the wharf at the time the fire broke out, except the one the crew of the propeller had?

Answer. There was not.

29. Interrogatory twenty-ninth. How long did it take the men to haul the propeller into the stream beyond the reach of the wharf?

Answer. It must have taken them fifteen minutes, from the time they
129 commenced to haul on her, until they drew her into the stream.

30. Interrogatory thirtieth. Would it have required more or less time

to have hauled the propeller into the stream at the time you saw the crew in the boat than when she was hauled out?

Answer. It would have required less time, for the reason that some men could have shoved her from the dock with poles, while the others hauled on the line; and also because the men could have worked on the capstan; and because, when she was hauled over, the men worked under great disadvantages, being obliged to work in the mud—two men hauling in the slack of the line round a tree.

31. Interrogatory thirty-first. Did you see any one acting as captain, or in the capacity of captain, over the crew of said propeller?

Answer. At the time I went there I saw no one on board the propeller, and I saw no one who seemed to have command of the crew in the yawl-boat, nor amongst those who landed at the point of land I have before spoken of;
130 they left her, and let Hough's men attend to the fire as they could.

32. Interrogatory thirty-second. Had the fire communicated to the wharf or the buildings on the wharf or the shed at this time?

Answer. The fire had not communicated to the buildings or shed at this time, nor to any part of the wharf.

33. Interrogatory thirty-third. Was there any place above or below libellants' wharf where the said propeller could have safely moored without endangering any one's property?

Answer. There was places above and below; she had come by places where she might have safely moored.

34. Interrogatory thirty-fourth. Where were you at the time you called to the men in the yawl, and what did you observe at that time?

Answer. I was on the roof of the shed, close to the bow of the propeller. I saw the small boat shove out from under the opposite bow of the propeller; they were not more than ten feet from the propeller when I saw them.

131 35. Interrogatory thirty-fifth. What third of the propeller's deck do you mean when you say that one-third of it was in flames when you saw the men in the boat, and towards what part of the propeller did the wind drive the flames?

Answer. I mean the third of her nearest the stern. The wind blew the flames towards the stern.

36. Interrogatory thirty-sixth. Could the propeller have been moved from the wharf at the time you first saw her, so as to prevent the libellants' buildings and property from being destroyed, in any other way than by hauling her across the stream, provided you had been assisted by the crew of the propeller; and if so, in what way?

Answer. She could have been if they had given us a line from her stern; we had plenty of time to have hauled her down stream out of the reach of damaging the buildings and before they caught fire.

37. Interrogatory thirty-seventh. Was there anything to prevent the crew from landing on the dock, and would they have been in any danger from
132 the fire in so doing?

Answer. There was nothing to prevent their landing, and there would have been no danger from the fire in their doing so.

JOSEPH MORTON.

Sworn to before me this 18th day of March, A. D. 1857.

JNO. W. MAGILL, *U. S. Com'r.*

1. Interrogatory first. State your name, age, occupation and residence; and are you acquainted with the parties to this suit?

Answer. My name is John B. Sollitt; I am 38 years of age; I reside in Will county, in this State; I know the libellants; I worked for them last fall; I don't know the respondents.

2. Interrogatory second. Where were you and what were you doing during the month of October last past?

Answer. I was in Bridgeport, working for Hough & Co. as a butcher; I commenced to work for them on the 3d day of October, and continued
133 working through the month of October to the 17th of November.

3. Interrogatory third. Where were you at work for Hough & Co. during that time?

Answer. At Bridgeport, at Hough & Co.'s packing-house, which fronts on the south branch of the Chicago river; the main building is a large stone building, and the other is a brick building, called the pork-house; part of the dock had a large shed over it.

4. Interrogatory fourth. Who was in the occupancy and use of those premises described by you on the 17th and 18th days of October last?

Answer. Hough & Co. were.

5. Interrogatory fifth. Was there any other property on the premises on those days than the buildings you have before described? If so, state what.

Answer. Well, there was a large amount of barrels of pork in the cellar, something between 400 and 500 barrels; there was 130 head of cattle
134 hanging on the beams in the main building, and a large quantity of tallow in the tallow-house. The hides from the cattle also lay in the house. There was a large amount of beef in barrels, which had been but lately packed; also a quantity of beef-hams partly packed, and all the tools and utensils and conveniences generally used in a large slaughtering and packing establishment. On the dock there was a very large amount of salt and beef packed, and a large quantity of empty barrels and tierces, and packed hides ready to be shipped. There was also a large quantity of salt in the cellar in the main building.

6. Interrogatory sixth. In whose possession was the property you have described on the day and night of the 17th of October last?

Answer. Hough & Co. had the possession of it.

7. Interrogatory seventh. Did you see the propeller Falcon on the 17th and 18th days of October last, or either of them; and if so, when did you
135 first see her, and under what circumstances? State fully and particularly all that transpired in relation to said propeller.

Answer. I saw her on the evening of the 17th come down to Hough & Co.'s dock, and she moored to Hough & Co.'s dock. She was there when I left the slaughter-house to go to bed—about ten o'clock in the evening. During the night or very early in the morning I woke up, and, looking through the window, saw a glare of light towards the slaughter-house. My house is not over 50 yards from the packing-house. I hollered fire, and ran for the dock. When I got on the dock I met the watchman—Messrs. Hough & Co.'s watchman. I called to him to get axes. When I first got there the propeller was moored to the dock and was on fire. The fire was coming up through the fire-hold hatchway, and so through the stairway leading to the hurricane-deck. The hurricane-deck was not on fire, and the whole size of the flames at this time was not larger than an ordinary window. I saw no one on the dock when I got there but the watchman. I did not see any one belonging to the propeller
136 during the fire at all. The first thing I did when I got there was to call to the watchman, and we went together in the packing-houses for axes to cut the moorings of the propeller. Scott, the watchman, found an axe and I told him to run and cut her loose, and I searched for beef-trees. By this time some more men were coming—Hough & Co.'s men; and I gave them the beef-trees I had collected and I took a beef-chopper and went to the dock, but Joseph Morton had already chopped the ropes of the propeller. We then tried to shove her off with beef-trees and shovers; we could move one end of her off, but we were not strong enough to shove off both ends at once. There were

not more than six of us on the dock at this time. The wind blew the propeller back against the dock as fast as we shoved her off at one end and went to the other. Finding that we could not shove her into the stream, we commenced to save the property by rolling barrels of beef, empty barrels and tierces into the river. I am sure we threw over one hundred empty barrels and some fifty barrels of beef into the river. We then closed the doors of the packing-house so as to retard the progress of the fire as much as we could and to enable
137 us to save property. We got out a quantity of beef in barrels and beef-hams that were packed and one tool-chest. The smoke then became so dense that we could not stay any longer, but no fire was in the building at this time. We then saved a few empty barrels and tierces that were stowed on the side of the building. The engines came shortly afterwards and commenced to throw water on the fire, but when they arrived the buildings were all on fire, and all they could do was to prevent the fire from spreading to the cooper-shop and out-buildings. All the buildings, wharf, and shed, and all the contents of the buildings and property on the dock, except what I have described as saved, were destroyed by fire.

8. Interrogatory eighth. How long after you arrived upon the dock could you have worked in shoving off the propeller without danger from the fire?

Answer. Oh, over a half an hour.

9. Interrogatory ninth. How long then did you actually work at shoving off the propeller before you gave it up and went to saving the property?

138 Answer. We worked at her some fifteen minutes.

10. Interrogatory tenth. How long after you arrived at the dock was it before the sheds caught fire from the propeller?

Answer. Well, I believe from fifteen to twenty minutes.

11. Interrogatory eleventh. What progress had the fire made on the propeller at the time the shed caught fire?

Answer. The hurricane-deck was on fire, and the fire was making to the after part of the vessel.

12. Interrogatory twelfth. How long after you arrived at the wharf could men have worked on the propeller without danger from the fire?

Answer. Men could have worked a half an hour and over on the forward part of the propeller, but not on the after part of her.

13. Interrogatory thirteenth. On what part of the propeller was the capstan of the propeller situated?

139 Answer. The one that I saw was on the forward part of the bow.

14. Interrogatory fourteenth. Did you, at any time during the progress of the fire, see any of the crew of said propeller, or any one who seemed to have charge of her?

Answer. I did not.

15. Interrogatory fifteenth. Will you describe the length of the dock, and the position of said propeller, in relation to the dock and the buildings during the fire?

Answer. Well, the dock of the libellants is a very long one, and all the buildings are situated at the upper end of the dock. The propeller lay moored alongside the buildings at the said upper end. I think the dock is over one hundred yards long. The east portion, or the portion of it going down stream, has no buildings on it.

16. Interrogatory sixteenth. Was there any place near to the point,
140 where the propeller lay, where she could have moored without endangering the property of the libellants?

Answer. There was; she might have moored a little east of where she did, or down stream, without endangering any one's property. She would then have laid clear of any one's buildings or property.

17. Interrogatory seventeenth. At the time you were trying to move the

propeller away from the dock; how many more men than you had would you have required to have hauled her down stream to the place you have indicated, and how long a time would it have required?

Answer. Had we had 10 or 12 men more we could have moved her right along, and could have shoved her along with sticks 200 feet down stream from the packing-house in 15 minutes.

18. Interrogatory eighteenth. What portion of the shed caught fire first?

Answer. The eaves of the east end of the shed.

141 19. Interrogatory nineteenth. How far down stream would it have been necessary to have moved the propeller in order to prevent the fire from communicating to the shed?

Answer. From sixty to seventy feet.

JOHN B. SOLLITT.

Sworn to before me this 20th day of March, A. D. 1857.

JNO. W. MAGILL,
U. S. Com'r.

1. Interrogatory first. State your name, age, occupation and residence; and are you acquainted with the parties to this suit?

Answer. My name is Alfred W. Rosman; I am 38 years of age; I am a master mariner; I reside in the city of Chicago; I know the parties to this suit.

2. Interrogatory second. How long have you been engaged in sailing as master mariner, and where have you been so engaged?

Answer. I have sailed as master mariner for 15 years; I have sailed
142 steam vessels eight years of that time; I have sailed on the lakes all the time.

3. Interrogatory third. Are you well acquainted with the condition and navigation of the Chicago river and its branches?

Answer. I am.

4. Interrogatory fourth. Do you know where the wharf of the libellants was situated on the 17th of October last? and if so, describe its location.

Answer. I do. It is on the south branch of the Chicago river, on the east side of it.

5. Interrogatory fifth. Had you, at any time during the last season, occasion to navigate the south branch of the Chicago river higher up than the libellants' wharf; if so, how many times, and at what time?

Answer. I had. I was up there once last season; it was in the month of November; I was in the propeller Buckeye; I have been up there every year for the last six years, sometimes twice a year, in propellers.

143 6. Interrogatory sixth. State the condition of the river at and above the libellants' wharf during the month of October last, and at other times when you have been there?

Answer. The river is good enough to navigate for all propellers that come in here, so far as depth of water is concerned. There are two ugly turns in the river, both above and below Hough's packing-house. When the wind blows fresh it is difficult to navigate a propeller there, especially if she is light.

7. Interrogatory seventh. Do you know where Cragin & Co.'s packing-house was situated on the 17th of October last? and if so, state its location and distance from libellants' wharf.

Answer. I do; it is situated about a mile above Hough & Co.'s packing-house, on the same side of the river.

8. Interrogatory eighth. What, in your opinion, is the most proper and prudent manner, and the one generally adopted by masters of propellers, in navigating the south branch of the Chicago river?

144 Answer. The general rule is to go up, and wind as they go up. They used generally wind at a slip, a little this side of Brown's packing-house, and another place between Hough & Brown's.

9. Interrogatory ninth. Would it, in your opinion, be safe and prudent to attempt to back a propeller from Cragin & Co.'s packing-house down stream in a dense fog, and towards night?

Answer. If I couldn't see neither shore, I wouldn't.

10. Interrogatory tenth. Are there any safe place at which a propeller might lay with safety, between Cragin & Co.'s dock and Hough's, where property of persons would not be endangered?

Answer. There were places all along on both sides of the river where a propeller might have laid with safety, and not endanger any one's property.

11. Interrogatory eleventh. Are you acquainted with the late master of the propeller Falcon?

Answer. I am. His name is Nelson Woodruff.

145 12. Interrogatory twelfth. What would have been the proper course for the captain of the propeller Falcon to have taken after the boat was discovered to be on fire?

Answer. The first thing would have been to have put the fire out if possible; and the next thing, if that was impossible, would be to have got her away from where she would damage property.

13. Interrogatory thirteenth. How many men would it have taken, after the fire was discovered, to have moved said propeller down stream her length, and how long a time would it have required?

Answer. Ten men would have moved her in five minutes, with or without the capstan, either up or down, her length, or across the stream.

14. Interrogatory fourteenth. Whose duty would it have been, under such circumstances, to have moved the boat?

Answer. The captain and crew.

A. W. ROSMAN.

Sworn to before me this March 23d, 1857.

JNO. W. MAGILL, *U. S. Com'r.*

146 1. Interrogatory first. State your name, age, occupation and residence.

Answer. My name is Hiram McHenry; I am 37 years of age; I am a master mariner by occupation; I reside at Racine, Wisconsin; I have sailed propellers and steamboats six years.

2. Interrogatory second. Are you acquainted with the Chicago river and its navigation?

Answer. I am.

3. Interrogatory third. Are you acquainted with the late captain of the propeller Falcon, Nelson Woodruff; and if so, what is his reputation for courage and presence of mind?

Answer. I am acquainted with Nelson Woodruff; I don't know as I ever heard any one speak of his courage or timidity; I made a passage with him once, and I thought he was very timid.

4. Interrogatory fourth. Did you know the propeller Falcon during the last season?

147 Answer. I did. I have known her since she came out.

5. Interrogatory fifth. How many men would have been sufficient to have moved the propeller Falcon her length down stream from libellants' wharf, and in what time would they have accomplished it?

Answer. Two men would have moved her down or up stream her length with a capstan in ten or fifteen minutes; 15 or 18 persons ought to move her her length in from 5 to 8 minutes, with or without her capstan, in any ordinary weather.

6. Interrogatory sixth. Are you acquainted with the position of Hough & Co.'s wharf?

Answer. I am.

H. McHENRY.

Sworn to before me this 23d day of March, A. D. 1857.

JNO. W. MAGILL, *U. S. Com'r.*

148 1. Interrogatory first. What is your name, age and residence?

Answer. My name is Theodore Breternitz; I am 22 years of age; I am a farmer now; I live about eight miles from here, in Cook county.

2. Interrogatory second. Where were you living during the month of October last?

Answer. I lived close by Hough & Co.'s slaughter-house, in Bridgeport.

3. Interrogatory third. Do you recollect the night on which the propeller Falcon burnt, and were you at the fire?

Answer. I do; I was at the fire.

4. Interrogatory fourth. About what time in the night did you know of the fire; and what was the condition of the boat at the time you first saw it?

Answer. It was about half past two o'clock in the morning when I was waked up by men from the slaughter-house; there was not much fire about the
149 propeller when I saw her; the fire was under the hurricane-deck, and burning up about the size of a window above the upper deck, and near the smoke-pipe.

5. Interrogatory fifth. Did you see fire at any other place than on the propeller at that time?

Answer. There was nothing on fire anywhere except on the propeller.

6. Interrogatory sixth. Who was the first person you saw after you arrived at the fire?

Answer. George Scott, Hough & Co.'s watchman, was the first man I saw.

7. Interrogatory seventh. What did you do at the fire, and what took place while you were present at the same?

Answer. When I got there I ran into the slaughter-house and got an axe and went to chop the line that fastened her bow to the dock; then we went to shoving her off from the dock with beef-trees; there was about ten men, I think,
150 trying to shove her off; we used to shove her bow off, but the wind would blow her back again; then we took beef and rolled it in the river, and also empty barrels; and afterwards rolled barrels of beef out of the way of the fire; we then tore down the fence that was round the yard where the hogs were kept; there was about 400 live hogs in the yard; we then went to carrying the staves out of the reach of the fire; then I worked on the fire-engines.

8. Interrogatory eighth. Did you assist in drawing the propeller out into the stream?

Answer. Yes, I did.

9. Interrogatory ninth. How many men were with you, and how did you do it?

Answer. There was five or six men with me; we went in a boat with Joe Lathrop. He said, Come on boys, and we went with him across the river, and put the end of the line round a tree, the other end being fastened to the propeller. We drew her away from the dock, and a tug coming along hitched on to her and hauled her up the river.

151 Interrogatory tenth. Did you see any of the crew of the propeller during this time, or at any other time during the fire?

Answer. I did not.

THEODORE BRETERNITZ.

Sworn to before me this 24th day of March, A. D. 1857.

JNO. W. MAGILL, *U S. Com'r.*

UNITED STATES,
Northern District of Illinois, ss:

I, John W. Magill, a commissioner appointed by the circuit court of the United States in and for the northern district of Illinois, in the seventh circuit, under and by virtue of the acts of Congress, do hereby certify that the foregoing depositions were taken by virtue of the stipulations of the parties annexed hereto, which stipulations are marked by me as stipulation No. 1, 2, 3, 4. 5, and 6.

I further certify that on the said fifth, sixth, nineteenth, twentieth, twenty-third, twenty-fifth, and twenty-seventh days of the month of February,
152 and that on the sixth, eighteenth, twentieth, twenty-third, and twenty-fourth days of the month of March, in the year one thousand eight hundred and fifty-seven, I was attended at my office by Messrs. Hosmer, Peck, *et al.*, proctors for the said libellants, and by the witnesses, who are of sound mind and lawful age, and the witnesses having been by me carefully examined and cautioned, and sworn to testify the whole truth, the depositions were by me reduced to writing in the presence of the witnesses, who subscribed the same in my presence; and I have retained the said deposition in my possession for the purpose of transmitting the same to the court for which the same was taken; and I hereby further certify that at the examination of the witness Samuel Woodward Messrs. Hooper and Clements appeared on the part of the respondent.

In testimony whereof, I have subscribed my name this eleventh day of May, A. D. 1857.

JNO. W. MAGILL,
United States Commissioner, Northern District, Illinois.

Com'r's fees: Tak'g dep's, serv'g writs, and c't'f'g *and c't'f'g* stip. att'ch'd—in all, $67 00. Paid by liblt's.

Witness fees:

	George Scott	2 days		$3 00
	Edward D. Brooks	1 "		1 50
	William J. Taylor	1 "		1 50
	Frank Lutzen	1 "		1 50
153	Jos. H. Lathrop	1 "		1 50
	S. Woodward	1 "		1 50
	Joseph Morton	1 "		1 50
	John B. Sollitt	1 "		1 50
	Alfred W. Rossman	1 "		1 50
	Hiram McHenry	1 "		1 50
	Theordore Breternitz	1 "		1 50
				18 00

JNO. W. MAGILL, *U. S. Com'r.*

Endorsed: Opened for Judge Scates, Feb'y 5th, 1858.
WM. H. BRADLEY, *Clerk.*

Endorsed: Filed May 20th, 1857.
WM. H. BRADLEY, *Clerk.*

United States of America, northern district of Illinois.

CITY OF CHICAGO,
County of Cook, and State of Illinois ss:

On the fifth day of March, in the year of our Lord one thousand eight hundred and fifty-eight, before me, George W. Baldwin, a commissioner duly appointed by the circuit court of the United States for the northern district of Illinois, under and by virtue of the act of Congress "for the more convenient taking of affidavits and bail in civil causes depending in the courts of
154 the United States," passed February 20th, 1812, personally appeared at the office of E. R. Hooper, in the city of Chicago, in the said northern district of Illinois, Rosell M. Hough, Charles H. Hunt, Henry B. Bay, Alfred W. Rosman, John Dorchester, Henry G. Foote, and Richard C. Bristol; and on the 6th day of March personally appeared before me, at the same place, Wales B. Lounsbury, Henry B. Willmarth, Tolman Wheeler, John Dorchester, Morgan L. Shapley, Charles H. Hunt, and Edward D. Brooks, witnesses on the part of the libellants in a certain civil cause of admiralty and maritime jurisdiction now depending and undertermined in the district court *court* of the United States for the northern district of Illinois, wherein O. S. Hough, Charles J. Kershaw, and Charles H. Severns, are libellants, and the Western Transportation Company are claimants.

Direct Exam'n.—Rosell M. Hough.

And the said Rosell M. Hough, having been by me first duly cautioned and sworn to testify the whole truth, did thereupon depose and say: My name is Rosell M. Hough; I reside in Bloomingdale, Du Page county, Illinois; I am now engaged in the beef and pork packing business. My regular business is that of a farmer. I was not in Chicago at the time Hough's packing-
155 house was burned down. I know the man who was employed as watchman by Hough & Co. during that fall, but I do not positively know that he was on the premises the night of the fire. The watchman was employed to guard the premises against fire or intrusion. The dock and wharf were built by myself and my brother. We drove piles, and capped them with timber, and then sheep-piled them on the inside. We then put some anchors in the bank, and had wooden ties from those anchors dovetailed into the caps of the piles to prevent the piles from springing out of place. The piles were driven on the east end of the dock, where there was no water at low-water mark, and not more than a foot and a half at any time. At the west of the dock there is a mouth of a slew, where the water, when we built the wharf, might have been two or three feet deep. It was filled up back of these spiles with earth by dredging. My impression is that we dredged the river in front of the spiles over a fourteen foot apron. We used the old-fashioned dredge. I should think if a vessel lay along the dock she could draw ten or eleven of water if necessary. We have had propellers of 500 or 600 tons burden load there without trouble, perhaps as high as 1,000 tons. I know of a good many propel-
156 lers that have loaded there. We used to load from five to ten propellers a year. I never knew of any to get aground there so that they could'nt get out. The land where the spiles were driven, and where the dredging was done, belonged at the time to my brother and myself. At the time of the accident I had sold the property to Charles J. Kershaw, and took back a mortgage to secure part of the purchase-money. This mortgage I have since foreclosed.

The proctors for the claimants here objected to all evidence respecting the title to the property.

Before this dredging was done a vessel could not have approached nearer than twenty feet to the place where the dock is now—a loaded vessel I mean.

Question. Were those premises in or out of the city limits?

(Objected to by claimant's proctor.)

Answer. They were out of the city limits. There were places above and below Hough's wharf where the vessel could have moored. We have, and had at that time, a dock of our own, about three hundred feet below, where they could have moored. There were no buildings or lumber on the dock at that time. Directly opposite this lower dock was another one that had no buildings connected with it. Immediately above Hough's packing-house, say a
157 thousand feet, were several other docks. Propellers usually winded 400 or 500 feet above our docks. There were no houses or buildings thereabout. I should hardly think a vessel could have laid there safely. I think it was not docked at that time. They were digging a slip there.

A written agreement is here shown the witness, marked by me "Exhibit A," and attached hereto, who thereupon testified as follows: I recognize several of the signatures to the paper shown me, marked Exhibit A. I recognize the signature of F. M. Hawkins & Co. and of Hough & Co. The firm of Hough & Co., at that time, were composed of O. S. Hough, Charles J. Kershaw, and Charles H. Seaverns.

And the said witness, being cross-examined on the part of the claimants, further testified as follows:

Cross-exam'n.

I was living in the country at the time of the fire, and had been living there about two months. At the time of the fire I had a mortgage covering the wharf and building to secure $25,000. The line of the wharf is east and west, the face of it fronts the river. The wharf was 375 feet long. There was no depth of water at low water, where we commenced driving the piles. I ceased to have any interest in the business during the spring of 1856, in April, I think.

The greater part of the time during the rest of the year I was absent
158 from the city.

And the said witness, being further examined on the part of the libellants, thereupon testified as follows: I have no interest whatever in this suit that I am aware of. The buildings were fully insured, and the insurance paid over. The buildings were insured for $22,000. I have heard Mr. Hough say that there was some insurance on the personal property.

R. M. HOUGH.

Taken, subscribed, and sworn to this 5th day of March, A. D. 1858.

G. W. BALDWIN, *U. S. Com'r.*

Direct exam'n.—Ch. H. Hunt.

And the said Charles H. Hunt, having been by me first duly cautioned and sworn to testify the whole truth, did thereupon depose and say:

A written agreement is here shown the witness, marked "Exhibit A," and attached hereto, who thereupon testified as follows:

I recognize several of the signatures to the paper shown me, marked "Exhibit A." I recognize the signature of G. S. Hubbard, of R. C. Bristol, of Julius White, of W. B. Lounsbury, and of E. K. Rogers.

CHAS. H. HUNT.

159 Taken, subscribed, and sworn to this 5th day of March, A. D. 1858.

G. W. BALDWIN,
U. S. Com's'r.

Direct exam'n.—H. B. Bay.

And the said Henry B. Bay, having been by me first duly cautioned and sworn to testify the whole truth, did thereupon depose and say:

My name is Henry B. Bay. I reside in Chicago. The dredging in front of Hough & Co.'s dock was done under my supervision; I dredged to the depth of from twelve to thirteen feet for the whole length of the dock. We made the bottom as nearly level as we could. We dredged for from twenty to thirty feet out into the river, or as far as there was any clay to be dug. I should think a vessel would have to draw at least twelve feet, in an ordinary stage of water, to be aground there. The water varies with the state of the wind; in a very strong south wind the water would vary about a foot; a west wind would make about the same variance. An ordinary propeller, drawing twelve feet of water, couldn't have approached her keel within less than thirty feet of the wharf before I dredged in front of it; a propeller drawing nine feet might ap-
160 proach from nine to ten feet nearer. I had a machine at work just above Hough & Co.'s dock at the time of the fire, and I was there next morning. There were wharves above and below Hough's; there were three wharves within 1,000 feet of the packing-house; there was one just adjoining Mr. Hough's, on the south; there was one about 700 feet below this, upon which there were no buildings at the time of the fire, and there was another wharf about 200 feet below Hough's packing-house, on the opposite side of the stream; there were no buildings upon this wharf. There was also one over 1,000 feet above the packing-house, on the same side of the river; I think this was also vacant, and had no house or buildings upon it. I think a propeller could have lain safely at either of these wharves; I am positive about the three below the packing-house, for I dug them myself. The nearest slip for winding above Hough's, I should think, is about 600 feet distant. A vessel could have moored there safely if she could have got in; I don't know whether a propeller drawing as much water as the Falcon could get in; I have seen propellers wind there, but I don't know how much water they drew; I think there is a good twelve feet of water in the mouth of the slip. I don't recollect the state
161 of the weather the evening before the fire as well as I do the next morning; it was very foggy then.

Cross-exam'n.

And the said witness, being cross-examined on the part of the claimants, thereupon further testified as follows:

At the time I commenced dredging the spiles were down. At the east end, where the spiles were driven, there might have been a foot of water at the time I commenced the dredging; at the west there must have been about three feet of water at that time. The banks sloped towards the centre. At the outer edge of the dredge, say thirty feet from the wharf, the water was from twelve to thirteen feet in depth. The deepest part of the river, opposite Hough's dock, could not have been more than fourteen feet. I should think the bed of the river would mean navigable water. We dredged out a strip thirty feet wide to where the water was thirteen feet. Five feet within the outer edge of the strip dredged, I should think the water might have been about ten feet, sloping thence gradually to the bed of the river. I don't remember positively the time I
162 dredged out Hough's wharf. I don't know when I did the last job of dredging there. The channel frequently fills up, more or less, after they have been dredged; it depends on the location. At high-water mark there might have been two feet of water at the east end of the dock; at the west end of the dock perhaps three feet. We do not often have to dredge out a channel a

second time, unless there is a slew in the vicinity. I have done some dredging at Hough's dock since it was first dug out—at the west end, near the slew. This was since the fire. If a channel is well dredged, it will not require to be dredged over until the water changes. My dredge commenced at the east end of the wharf, and ended at the west.

Direct exam'n.

And the said witness, being further examined on the part of the libellants, thereupon testified as follows:

The dredging done by me at Hough's wharf since the fire was to construct a slip, not to deepen the old channel. At the west end of the dock, at an ordinary stage of water, it was, previous to the dredging, between two and three feet; at the east end about a foot. The bank slopes very gradually from the brink to the river bed.

163 H. B. BAY.

Taken, subscribed, and sworn to before me this 5th day of March, A. D. 1858.

G. W. BALDWIN, *U. S. Com'r.*

A. W. Rosman.

And the said Alfred W. Rosman, having been by me first duly cautioned and sworn to testify the whole truth, did thereupon depose and say:

My name is Alfred W. Rosman; I reside in Chicago; I saw the Falcon after she was burned; she was in the middle of the river at that time. I am acquainted with Hough's dock. At the time the Falcon was burnt I was acting as master of a vessel. I have been acquainted with Chicago and the river here since 1835. I have loaded propellers at Hough's dock three or four times. In November, 1856, the month after the Falcon was burnt, I loaded at that dock a vessel drawing ten and a half feet of water. The water sometimes varies there with the wind about a foot, and generally through the river. When I was loading there, and drawing 10½ feet of water with my vessel, I did not touch bottom. There was no difficulty in starting from that dock with a vessel drawing ten and a half feet of water. I should think a vessel drawing ten feet

164 could not get aground there.

(This opinion of the witness is objected to as evidence by claimant's proctor.)

Direct examination.

Interrogatory. How long would it take ten men, working at the capstan situated on the promenade deck, with a line fastened to the opposite shore of the river, to remove a propeller like the Falcon from the dock into the bed of the river?

(Question objected to by claimant's proctor.)

The state of the wind would make a good deal of difference. In ordinary weather she could be got off in ten or fifteen minutes.

Interrogatory. Would it have been possible, under the like circumstances, to have moved the vessel up or down the river the length of the vessel?

(Question objected to by claimant's proctor.)

Answer. She could have been moved down the river in that length of time. I am acquainted with the Falcon; it would have been possible, by dropping a boat into the river, to have fastened a rope to her rudder or her brackets, in the stern of the propeller, notwithstanding the upper part of the vessel might be on fire. I should think the river opposite the packing-house was about 100 feet wide.

second time, unless there is a slew in the vicinity. I have done some dredging at Hough's dock since it was first dug out—at the west end, near the slew. This was since the fire. If a channel is well dredged, it will not require to be dredged over until the water changes. My dredge commenced at the east end of the wharf, and ended at the west.

Direct exam'n.

And the said witness, being further examined on the part of the libellants, thereupon testified as follows:

The dredging done by me at Hough's wharf since the fire was to construct a slip, not to deepen the old channel. At the west end of the dock, at an ordinary stage of water, it was, previous to the dredging, between two and three feet; at the east end about a foot. The bank slopes very gradually from the brink to the river bed.

163 H. B. BAY.

Taken, subscribed, and sworn to before me this 5th day of March, A. D. 1858.

G. W. BALDWIN, *U. S. Com'r.*

A. W. Rosman.

And the said Alfred W. Rosman, having been by me first duly cautioned and sworn to testify the whole truth, did thereupon depose and say:

My name is Alfred W. Rosman; I reside in Chicago; I saw the Falcon after she was burned; she was in the middle of the river at that time. I am acquainted with Hough's dock. At the time the Falcon was burnt I was acting as master of a vessel. I have been acquainted with Chicago and the river here since 1835. I have loaded propellers at Hough's dock three or four times. In November, 1856, the month after the Falcon was burnt, I loaded at that dock a vessel drawing ten and a half feet of water. The water sometimes varies there with the wind about a foot, and generally through the river. When I was loading there, and drawing 10½ feet of water with my vessel, I did not touch bottom. There was no difficulty in starting from that dock with a vessel drawing ten and a half feet of water. I should think a vessel drawing ten feet

164 could not get aground there.

(This opinion of the witness is objected to as evidence by claimant's proctor.)

Direct examination.

Interrogatory. How long would it take ten men, working at the capstan situated on the promenade deck, with a line fastened to the opposite shore of the river, to remove a propeller like the Falcon from the dock into the bed of the river?

(Question objected to by claimant's proctor.)

The state of the wind would make a good deal of difference. In ordinary weather she could be got off in ten or fifteen minutes.

Interrogatory. Would it have been possible, under the like circumstances, to have moved the vessel up or down the river the length of the vessel?

(Question objected to by claimant's proctor.)

Answer. She could have been moved down the river in that length of time. I am acquainted with the Falcon; it would have been possible, by dropping a boat into the river, to have fastened a rope to her rudder or her brackets, in the stern of the propeller, notwithstanding the upper part of the vessel might be on fire. I should think the river opposite the packing-house was about 100 feet wide.

165 Interrogatory. Suppose a rope had been fastened to the vessel in the manner indicated by you, how long would it have taken ten men from the opposite bank of the stream to have pulled the propeller across the river?

(Question objected to by claimant's proctor.)

Answer. To attach the rope, cross the river in a boat, and pull the vessel across, would take, I should think, from fifteen to twenty minutes.

Interrogatory. How long, under the same circumstances, would it have taken twenty men?

(Question objected to by claimant's proctor.)

Answer. It would take twenty men just as long as it would ten men. It wouldn't take me three minutes to get my boat across the creek if I saw she was going to burn up. Before the dock had been dredged, I should think a vessel like the Falcon could not have approached nearer than twenty or thirty feet to the wharf. I think there was, at the time of the fire, one wharf just above, and one below, Hough's packing-house. These, I should think, were both within three or four hundred feet. I believe these wharves were both vacant and had no buildings on them.

166 *Cross-examination.*

And the said witness, being cross-examined in behalf of the claimants, further testified, in answer to the cross-interrogatories propounded to him, as follows:

Cross-int'y. If you were suddenly aroused at night and found the boat of which you were master, on fire, what would you regard your first duty?

Answer. To put out the fire.

Cross-interrogatory. Can you form any idea how long it would take you, suddenly aroused by fire late at night, in a thick fog, finding the after part of your boat in flames, aground ahead, the wind blowing strong against the ——, so strong as to blow your boat back when moved off by men with beef-trees, to find a boat, to fix a line to the opposite shore, and warp her off, by aid of the capstan, from Hough's wharf?

Answer. I could get a line across and get men pulling at it in twenty minutes. I think I could get the vessel off the dock in twenty minutes.

Direct examination.

And the said witness, being further examined on the part of the libellants, thereupon testified as follows:

I replied to the last question that I thought I could get the boat off in twenty minutes, because I think that is time enough. I don't mean that it
167 could be done if the vessel were hard aground; but the vessel couldn't have been hard aground, or they couldn't have pushed her off the dock. The Falcon could not get aground abreast of Hough's dock, under any circumstances, whether properly managed or not. The duties of a watchman on such a propeller are, to look after the vessel, guard against fire and thieves, and keep circulating all the time.

Interrogatory. If a watchman had been on board the Falcon, attending to the duties you have just described, could the vessel take fire, and the fire increase to such a magnitude as to extend all along the main deck, and give no time to extinguish it or remove the vessel, without the watchman having an opportunity to rouse the captain and the crew before the fire had increased to that magnitude?

(Question objected to by claimants' proctor.)

Answer. I don't think the watchman could be attending to his duties and a fire occur under such circumstances. It is customary to have only one watchman on propellers of that size.

A. W. ROSMAN.

Taken, subscribed, and sworn to, before me, this 5th day of March, A. D. 1858.

G. W. BALDWIN.

168 *Jno. Dorchester.*

And the said John Dorchester, having been by me first duly cautioned and sworn to testify the whole truth, did thereupon depose and say:

My name is John Dorchester; I reside in Chicago; I am in the insurance business. The Northwestern Insurance Company, of Oswego, New York, had a policy of $5,000 on Hough's packing-house or its contents—I think it was not on the house. I have no certain knowledge of its being paid, except from the entries on our books and the admissions of Hough & Co.

A written agreement, attached hereto, and marked Exhibit A, was here shown the witness, who thereupon testified as follows:

I recognize the signature of Julius White to the paper shown me, marked Exhibit A; he was, at the time the paper bears date, the agent of the Northwestern Insurance Co.

(Answer objected to by claimants' proctor.

J. DORCHESTER.

Taken, subscribed, and sworn to, this 5th day of March, A. D. 1858, before me.

G. W. BALDWIN, *U. S. Com'r.*

169 *Direct examination.—H. G. Foote.*

And the said Henry G. Foote, having been by me duly cautioned and sworn to testify the whole truth, did thereupon depose and say:

My name is Henry G. Foote; I reside in Chicago.

(A written agreement was here exhibited by me to the said witness, who, after examining the same, thereupon testified thereto as follows—said agreement being attached hereto, and marked by me "Exhibit A:")

I recognize the signature of Calvin T. Hubbard on the paper shown me, marked "Exhibit A." I am acquainted with his handwriting, and know this to be his signature. The Star Insurance Company paid part of the loss occasioned by the burning of the packing-house of Hough & Co. Their policy, I think, was for $4,000. Their proportion of the loss was paid by them; I don't remember the amount—about $2,800, I think.

The evidence respecting the policy, and the proportion paid by the Star Insurance Co., is here objected to by the proctor for claimants.

H. G. FOOTE.

Taken, subscribed, and sworn to, this 5th day of March, A. D. 1858, before me.

G. W. BALDWIN, *U. S. Com'r.*

170 *Direct exam'n.—Ch. H. Hunt recalled.*

And the said Charles H. Hunt, being recalled by the libellants' proctor, thereupon testified as follows:

The Ætna Company had a policy on Hough's packing-house and the contents for $10,000, which was paid in full. The money was paid in November, 1856.

The paper marked Exhibit A is here shown to the witness, who thereupon testified as follows:

I recognize the companies named in the writing shown me as all having policies on the packing-house or contents. In making up our policies, we in-

corporated in the policy, or indorse upon it, the names of all the other companies insuring the same property, and I recognize these companies as being on our policy at that time.

(This answer is objected to by claimants' proctor.)

CHAS. H. HUNT.

Subscribed and sworn to this 5th of March, 1858, before me.

G. W. BALDWIN, *U. S. Com'r.*

171 *R. C. Bristol.—Direct exam'n.*

And the said Richard C. Bristol, having been by me first duly cautioned and sworn to testify the whole truth, did thereupon depose and say:

I am the secretary of the Chicago Mutual Insurance Company. We had a policy of $5,000 on the packing-house of Hough & Co. at the time of the fire, and of $3,500 on the contents.

The written agreement marked Exhibit A was here shown to the witness, who thereupon, after examining it, testified thereto as follows:

I executed the writtten agreement shown me in behalf of the company I represent.

(Answer objected to by claimants' proctor.)

The policy for $5,000 was paid, and the other, except some small claims for salvage, which was deducted from it.

A document marked Exhibit B, and attached hereto, is here shown to the witness, who, after examining it, testified thereto as follows:

The policy shown me, marked Exhibit B, is the $5,000 policy referred to by me in my foregoing answer.

R. C. BRISTOL.

Subscribed and sworn to before me this 5th day of March, A. D. 1858.

G. W. BALDWIN,
U. S. Com'r.

Examination was closed for this day. Adjourned till March 6th, at 10 a. m.

172 *W. B. Lounsbury.*

March 6th, 1858.—Examination of witnesses resumed this day at 10 o'clock.

And the said Wales B. Lounsbury, having been by me first duly cautioned and sworn to testify the whole truth, did thereupon depose and say:

I reside in Chicago. I am agent of the Star Insurance Co.; of the Phœnix Insurance Company, of Hartford, Ct.; and of the Metropolitan Fire Insurance Co., of New York.

A policy of insurance from the Star Insurance Company was here shown to the witness, attached hereto, and marked Exhibit C, who thereupon testified as follows:

The policy of insurance shown me, marked Exhibit C, is a true copy of the policy issued by the Star Insurance Co. from my office, on certain property in Hough's packing-house, which was consumed by fire at the time of the burning of the Falcon.

A policy of insurance, marked Exhibit D, and attached hereto, was then shown the said witness, who thereupon testified as follows:

The policy of insurance shown me, marked Exhibit D, is a true copy of a policy issued by the Phœnix Insurance Company, of Hartford, Conn., from my office, on Hough's packing-house, which was destroyed by fire at the time of the burning of the Falcon.

173 *Direct exam'n.— W. B. Lounsbury.*

A policy of insurance, marked Exhibit E, and attached hereto, was then shown the said witness, who thereupon testified as follows:

The policy of insurance shown me, marked Exhibit E, is a true copy of the policy issued by the Metropolitan Insurance Company, of New York, from my office, on certain property contained in Hough's packing-house, which was consumed by fire at the time of the burning of the Falcon. The sum of twenty-eight hundred and ninety-four $\frac{70}{100}$ dollars has been paid by the Star Insurance Company on their said policy, as their proportion of the loss by said fire. The sum of four thousand dollars has been paid by the Phœnix Insurance Company on their policy, being the full amount for which they insured the said packing-house. The sum of three thousand six hundred and eighteen $\frac{38}{100}$ dollars has been paid by the Metropolitan Insurance Company on their said policy, as their proportion of the loss by said fire.

A written agreement was here shown to the witness, marked "Exhibit A," and attached hereto, and after examining it, said witness testified thereto as follows:

I recognize the written agreement shown me, and marked "Exhibit A."
174 I executed the agreement in behalf of the Phœnix Insurance Co. and the Metropolitan Insurance Company. I also recognize the signature of Talvin T. Hubbard, vice-president of the Star Insurance, of which I am agent. He executed it on behalf of that company.

W. B. LOUNSBURY.

Taken, subscribed, and sworn to, this sixth day of March, A. D. 1858, before me.

G. W. BALDWIN, *U. S. Com'r.*

Direct exam'n.—H. B. Willmarth.

And the said Henry B. Willmarth, having been by me first duly cautioned and sworn to testify the truth, did thereupon depose and say:

I live in Chicago. I am agent of the Hartford Fire Insurance Company, of Hartford, Connecticut. On the 6th of October, 1856, E. K. Rogers was the agent in this city of said company.

A policy of insurance, marked "Exhibit F," and attached hereto, was here shown to the witness, who, after examining it, thereupon testified as follows:

The policy shown me, purporting to have been issued from the Hartford Insurance Co. on Hough's packing-house, which was consumed by fire at the time of the burning of the Falcon, I believe to be the original policy
175 issued by said company upon said premises. I recognize the signature of Mr. E. K. Rogers upon it, who was agent of the company at the time the policy bears date, and I find a memorandum of the policy in the books of said company, now in my possession. I hold receipts in my possession for the full amount due on this policy from Hough & Co.

A written agreement, marked "Exhibit A," and attached hereto, was here exhibited to the said witness, who, after examining it, thereupon testified thereto as follows:

I recognize the signature of E. K. Rogers upon the written agreement shown me, marked "Exhibit A." Mr. Rogers was agent of the Hartford Insurance Co. at the time this instrument dates. I am well acquainted with his signature.

HENRY B. WILLMARTH.

Taken, subscribed, and sworn to, before me, this 6th day of March, A. D. 1858.

G. W. BALDWIN, *U. S. Com'r.*

Tolman Wheeler.

And the said Tolman Wheeler, having been by me first duly cautioned and sworn to testify the whole truth, did thereupon depose and say:

I reside in Chicago. I was, at the time Hough's packing-house was
176 burned, secretary of the Garden City Insurance Company.

A policy of insurance is here shown to the witness, marked "Exhibit G," and attached hereto; and the said witness, after examining the same, testified thereto as follows:

The policy of insurance shown me is a true copy of an original policy issued by the Garden City Insurance Company, on the 26th of April, 1856, on the stone packing-house of O. S. Hough and C. J. Kershaw, for the sum of $3,000. These premises insured by said company were consumed by fire at the time of the burning of the Falcon. The whole amount of the company's insurance has been paid by the company in full. Search has been made in the office of the company for the original policy, of which this is a copy; but it cannot be found—so I am informed by the present secretary. This copy has been prepared by filling up one of the blanks of the company from the entries on the books made at the time of issuing the policy.

A written agreement, marked "Exhibit A," and attached hereto, was then shown to the witness, who thereupon testified thereto as follows:

I remember that the Garden City Insurance Company consented to the arrangements indicated in the agreement now shown me, marked "Exhibit A,"
at the time of its execution. The signature of the company was
177 omitted through some oversight at that time, and I have signed it to-day, with the consent of the proctors for the claimants, *nunc pro tunc*.

TOLMAN WHEELER.

Taken, subscribed, and sworn to, this 6th day of March, A. D. 1858, before me.

G. W. BALDWIN, *U. S. Com'r.*

J. Dorchester recalled.

And the said John Dorchester, having been again called by the proctors for the libellants, and having been by me first duly cautioned and sworn to testify the whole truth, did thereupon depose and say:

I was connected with the Northwestern Insurance Company at the time of the fire at Hough's wharf.

A paper is here shown to the witness, marked "Exhibit J," and attached hereto, who thereupon testified thereto as follows:

(The proctor for the claimants objected here to the introduction of the aforesaid paper as evidence.)

The paper shown me, marked "Exhibit J," I believe to be a true copy, taken from the books of the Northwestern Insurance Company, of the written portion
of a policy of insurance issued by said company to Hough & Co.
178 on certain property contained in their packing-house, destroyed by fire at the burning of the Falcon. The entries on the book were not made by me. This paper I know to be a correct transcript from the book. The amount of insurance due Hough & Co. on this policy is marked "paid" in the books of the company, and Mr. Hough has admitted, in my presence, the payment.

(Answer objected to by claimants' proctor.)

J. DORCHESTER.

Taken, subscribed, and sworn to, before me, this 6th day of March, 1858. A. D. 1858.

G. W. BALDWIN.

M. L. Shapley.

And the said Morgan L. Shapley, having been by me first duly cautioned and sworn to testify the whole truth, did thereupon depose and say:

I reside in Chicago. I am now engaged in railroad business. At the time Hough's dock was constructed, which was before the packing-house was finished, I drove the spiles necessary in the prosecution of the work. They were driven in right along the edge of the water, as near as we could get to
179 the shore. In some places there be no water; in others scarcely any, and in some few places the water would be deeper. Before the wharf was built vessels couldn't approach the shore without a long gang-plank.

M. L. SHAPLEY.

Taken, subscribed, and sworn to, this 6th day of March, A. D. 1858, before me.

G. W. BALDWIN,
U. S. Com'r.

Ch. H. Hunt recalled.

And the said Charles H. Hunt, being again called by the proctors for the libellants, and having been by me first duly cautioned and sworn to testify the whole truth, did thereupon depose and say:

I am one of the firm of Hubbard & Hunt. We are agents for the Ætna Insurance Company.

A policy of insurance, marked by me "Exhibit H," and attached to this deposition, was here shown to the witness, who, after examining the same, thereupon testified as follows:

The policy of insurance shown me, and marked "Exhibit H," is a true copy, taken from the books of the company, of a policy issued by the Ætna Company, of Hartford, Conn., on certain property belonging to Hough & Co., and
180 contained in their packing-house at the time of the burning of the Falcon, and destroyed at that time. The original policy has been sent to the home office, at Hartford, Conn. This policy has been paid in full to Hough & Co., with a slight discount off. The amount insured by the policy was $5,000.

A policy of insurance, marked by me "Exhibit I," and hereto attached, was then shown to the said witness, who, after examining the same, thereupon testified as follows:

The policy of insurance shown me, and marked "Exhibit I," is a true copy, taken from the books of the agency of the company in this city, of a policy issued by the Ætna Company, of Hartford, Conn., on Hough and Kershaw's packing-house, which was destroyed by fire at the time of the burning of the Falcon. The original policy has been sent to the home office, at Hartford. The amount insured by it was $5,000, which has been paid in full.

CHAS. H. HUNT.

Taken, subscribed, and sworn to, before me, this 6th day of March, 1858.

G. W. BALDWIN,
U. S. Com'r.

181 *Edw. D. Brooks.*

And the said Edward D. Brooks, having been by me first duly cautioned and sworn to testify the whole truth, did thereupon depose and say:

I reside in Chicago. I was in the employ of Hough & Co. as clerk in the packing-house at the time of the burning of the Falcon.

Felt, Hawkins & Co. lost, at the fire which destroyed the packing-house, property to the value of $23,340.

I am acquainted with the signaturs of Felt, Hawkins & Co.

I recognize the signature of Felt, Hawkins & Co. to the written agreement shown me, and marked "Exhibit A."

The actual loss to Hough & Co. from their property destroyed in said fire was their packing-house and shed, amounting in value to $24,000, and damage to their wharf, to the amount of $500.

Personal property in the packing-house belonging to them, to the value of $2,500, was also destroyed, and one hundred barrels of mess-pork, valued at $2,000, one thousand empty tierces, and ninety-five hundred empty barrels, of the value of eleven thousand dollars.

There was also damaged forty thousand bushels of salt and twenty-five hundred sacks of salt, to the amount of ten thousand dollars.

The loss to Hough & Co., occasioned by the fire, amounted in the
182 aggregate to fifty thousand dollars.

They had insurance in different offices upon their buildings and stock to the amount of thirty-two thousand dollars, all of which has been paid, leaving a loss actually sustained by them of eighteen thousand dollars.

(The last paragraph respecting insurance is objected to by claimants' proctor.)

I saw the steamer Falcon moored at the wharf of Hough & Co. the night before the fire.

A chart, marked by me "Exhibit K," and filed with the papers of this case, was here exhibited to the witness, who thereupon testified thereto as follows:

The chart shown me, marked "Exhibit K," does not give an accurate idea of the position of the propeller as I saw it. The bows of the propeller lay that night between four and five feet from the west end of Hough & Co.'s dock. The dock ends at the west, on the slough. She had her bow hawser out on the corner pile about two feet from the end of the dock. She had also a stern hawser out fastened to another spile about two hundred feet from the west end of the dock. The dock is 470 feet long. She had a breast line out also, made fast to a pile. The propeller was lying straight with the dock, and as
183 close to it as she could. From the east end of the shed to the end of the dock was about two hundred and seventy feet. The vessel could have been moored at this part of the dock as well as in front of the packing-house, and, had she been moored there, I don't think any greater damage would have been done to the property of Hough & Co. by the burning than perhaps the destruction of the salt-house. There was from 6,000 to 7,000 bushels of salt, worth about $3,500, in the salt-house at that time.

There was a dock on the opposite side of the river, nearly opposite the lower end of Hough's wharf. It was vacant. The propeller could have moored there safely.

The propeller could not have been aground in the position she was the night I saw her. I know she was not aground at the time of the fire, because I helped push her off myself. There were men with me pushing. We pushed at the bows, at the stern, and in the breast; and we pushed her out ten feet into the river. We pushed with beef-shovers.

It was very foggy indeed; when we first reached the fire you could see, perhaps, one hundred and fifty feet. We could see across the slough at the end of the dock, but not across the river.

184 *Cross-examination.*

And the said witness, being cross-examined on the part of the claimants, further deposed as follows:

The stern of the boat came just about five (5) feet from the east end of the shed-house. I wasn't at the dock when the propeller tied up at the wharf. I came there between seven and eight o'clock, and found her there.

Before I went to Hough & Co. I had been employed as clerk in commission houses in Chicago and Boston.

I went into the employ of Hough & Co. in Nov'r, 1855. The estimate of the loss sustained by Felt, Hawkins & Co. at said fire is based upon the items and figures set out in detail in the papers I now hold in my hand, which I will file as an exhibit, and make a part of my answer.

The paper produced by said witness was then marked by me "Exhibit L," and is attached to this deposition.

My estimate of the value of the packing-house is based on what it cost. I was bookkeeper during the time part of it was built. By the books, the packing-house cost $24,000.

I think the amount of the bill brought in for repairing the dock was $500. Upon this I base my estimate of the damage done to it.

185 The personal property in the warehouse, belonging to them, consisted of steam-engine, tubs, &c.

In making my estimate of the value of this property, I depended upon my own knowledge. I thought it was worth $2,500.

My knowledge of the value of the steam-engine was based upon the bill rendered for the cost of it.

The bill, I presume, is at the office. The bill was paid. I don't recollect the exact amount of it.

I estimate the tierces to be worth one dollar and a half apiece, and one dollar apiece for the barrels.

I made my own average to the damage of the salt. I examined the pile of salt that was left; estimated how much was burnt, and how much was lost into the river by the burning of the dock; how much was injured by water; and estimated the damage to be one-half its value. This includes the sacks of salt.

The wind was blowing from the northwest at the time of the fire. It blew the flame directly upon the packing-house. The fire seemed to be gaining at each end of the propeller. The wind didn't seem to blow it either way, except across the boat broadside, down the dock upon the packing-houses.

We pushed the boat off into the stream with beef-shovels, and it

186 returned to the dock again, owing, I suppose, to the wind.

I was working under the shed that night while the fire was burning. The shed was open towards the boat. The wind blew smoke and flame directly upon us from the vessel. From the time I first got on the dock it must have been about fifteen or twenty minutes before we were driven away by the smoke and flames.

The upper decks of the boat must have been a little above the roof of the shed. The shed doesn't cover the wharf. The edges of the shed must be about two feet from the dock.

When I first saw the Falcon at the wharf, at 7 o'clock p. m., it was very foggy.

Direct exam'n.

The direct examination of the witness was here resumed by the libellants' proctor, and the said witness then further deposed as follows:

At that time I could see quite a distance across the river. As I was coming to the packing-house, along the street, I saw the propeller when I must have been 600 feet from it.

If the propeller had gone four feet from the west end of the dock, opposite the slough, she would have run aground, for it is shoal in that place. The bar extended out into the river from six to eight feet.

187 Before entering Mr. Hough's employ, I had been clerk, and, part of the time bookkeeper, for seven years in a commission house in Boston.

I think I have a knowledge of the kind of property destroyed in the fire, so that I am competent to estimate its value. I have stated what I thought, of my own knowledge, as to the value of the goods destroyed. I also think the valuation put upon the houses a fair one, from my knowledge of the value of buildings in Chicago.

E. D. BROOKS.

Taken, subscribed, and sworn to, this 6th day of March, 1858, before me.
G. W. BALDWIN, *U. S. Com'r.*

Exhibit A.—G. W. Baldwin, U. S. Com'r.

Memorandum of agreement made this thirty-first day of October, in the year one thousand eight hundred and fifty-six, by and between the Ætna Insurance Company, Hartford Fire Insurance Company, Phœnix Insurance Company, of the city of Hartford, and State of Connecticut; Chicago Mutual Insurance Company, Garden City Insurance Company, Metropolitan Insurance
188 Co., of New York; Northwestern Insurance Company; Hawkin, Van Antwerp & Felt, and Bush & Howard, of the one part, and Hough & Company, of the other part, as follows, viz:

Whereas Hough & Co., at the instance of all the parties hereto, who have each sustained loss by the destruction by fire of the said Hough & Co.'s dock and packing-houses, with the property thereon standing, on the morning of the 18th day of October, A. D. 1856, caused by the burning of the propeller Falcon, are about to commence suit in admirality, in the district court of the United States for the northern district of Illinois, against the owners of the said propeller, to recover the damages sustained by the destruction of their said property as aforesaid, and the amount recovered by the said Hough & Co., if any, against the said owners of the said propeller, are to be divided by the said Hough & Co. among the parties hereto, pro rata, in proportion to the amount lost by each of the said parties:

And whereas said suit is to be instituted and prosecuted by the said Hough & Co. for the mutual benefit of all the parties hereto, in proportion to the amount of loss each has sustained: Now, therefore, in consideration of the premises, the said parties of the first part, jointly and severally, promise
189 and agree, to and with the said Hough & Co., party of the second part, to pay them, said Hough & Co., four-fifths, ($\frac{4}{5}$,) the same being about their proportionate share or interest in the subject-matter of said suit, of all costs, attorney's fees, and expenses of whatever name, nature, or kind that may be incurred by the said Hough & Co. in instituting and prosecuting said suit; and the said parties of the first part further agree to advance to said Hough & Co., on demand, their proportionate share of all moneys necessary and proper to institute and carry on said suit, the said Hough & Co. being the sole judges of the necessity of such advances.

It is further mutually agreed, by and between the different insurance companies and firms constituting the said first parties, that they will divide and share among themselves, pro rata, in proportion to the amount of loss sustained by each, their share, as above fixed, of all expenses, costs, and fees incurred in the instituting and prosecuting said suit.

In witness whereof, the said parties hereto have set their hands the day and year first above written.

W. B. LOUNSBURY,
Agent of Phœnix Insurance Co. and Metropolitan Ins Co.
190 G. S. HUBBARD,
Ag't Ætna Ins'r Co.
R. C. BRISTOL,
Sec'y C. M. I.
JULIUS WHITE,
Ag't for N. W. Ins. Co.
CALVIN T. HUBBARD,
V. P. Star Ins. Co.
E. K. ROGERS,
Ag't Hartford Fire Ins. Co.
TOLMAN WHEELER,
Sec'y of Garden City Ins. Co. in 1856.
FELT, HAWKINS & CO.
HOUGH & CO.

Endorsed:

Exhibit A.

This written agreement was exhibited by me during the foregoing examination to Rosell M. Hough, Charles H. Hunt, John Dorchester, Henry G. Foote, Richard C. Bristol, William B. Lounsbury, Henry B. Willmarth, and Tolman Wheeler, and was testified to by them as Exhibit A in their respective depositions taken before me on the 5th and 6th day of March, A. D. 1858, all of which said depositions are hereto appended.

G. W. BALDWIN,
U. S. Com'r.

191 Chicago Mutual Insurance Company.—No. 369.

By this policy of insurance the Chicago Mutual Insurance Company, in consideration of one hundred dollars to the said corporation paid, the receipt whereof is hereby acknowledged, hath agreed to insure, and doth hereby agree to insure, Messrs. O. S. Hough and C. J. Kershaw against loss or damage by fire, to the amount of five thousand dollars, on their stone packing-house, situate on east side of the south branch, Chicago river.

Other insurance permitted, without notice, until required.

And the said corporation doth hereby promise and agree to make good unto the said assured, their executors, administrators, and assigns, all such immediate loss or damage, not exceeding in amount the sum insured, as shall happen by fire to the property as above specified, from the 8th day of October, one thousand eight hundred and fifty-six, (at noon,) unto the 8th day of October, one thousand eight hundred and fifty-seven, (at noon.) The said loss or damage to be estimated according to the true and actual cash value of the property at the time the same shall happen, and to be paid within sixty days after notice, and proof thereof made by the assured, and received at this office,
192 in conformity to the conditions annexed to this policy: Provided always, and it is hereby declared, that this corporation shall not be liable to make good any loss by theft, or any loss or damage by fire which may happen or take place by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power: And provided further, that in case the assured shall have already any other insurance against loss by fire on the property hereby insured, and not notified to this company, and mentioned in or endorsed upon this policy, then this insurance shall be void and of no effect; and if the

said assured, or their assigns, shall hereafter make any other insurance on the same property, and shall not, with all reasonable diligence, give notice thereof to this company, and have the same endorsed on this instrument, or otherwise acknowledged by them in writing, this policy shall cease, and be of no further effect; and if any subsequent insurance shall be made upon the property hereby insured, which, with the sum or sums already insured, should, in the opinion of the said Chicago Mutual Insurance Company, amount to an over-insurance, said company reserve to themselves the right of cancelling this policy by paying to the insured the unexpired premium pro rata; and in case of
193 any other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the assured shall not, in case of loss or damage, be entitled to demand or recover of this company any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said property.

And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above-mentioned premises shall at any time after the making and during the continuance of this insurance be appropriated, applied, or used to or for the purpose of carrying on or exercising therein any trade, business, or vocation, denominated hazardous or extra-hazardous, or specified in the memorandum of special rates in the conditions annexed to this policy, or for the purpose of storing, using, or rendering therein any of the articles, goods, or merchandise, in the conditions aforesaid, denominated hazardous or extra-hazardous, or included in the memorandum of special rates, unless herein otherwise specially provided for, or hereafter agreed by this company in writing, and added to or endorsed upon this policy, or if such premises are privileged
194 to be occupied for certain purposes denominated hazardous, extra-hazardous, or included in the memorandum of special rates by this company in writing, and they shall at any time afterwards and during the continuance of this insurance be occupied for other purposes denominated hazardous or extra-hazardous, or included in the memorandum of special rates, without leave for such change of occupation being first obtained from this company in writing, and added to or endorsed upon this policy, then and from thenceforth, so long as the same shall be so appropriated, applied, used, or occupied, these presents shall cease and be of no force or effect. And it is moreover declared that this insurance is not intended to apply to nor cover any books of account, written securities, deeds, or other evidence of title to lands, nor to bonds, bills, notes, or other evidences of debt, nor to money or bullion. And that this policy is made and accepted in reference to the conditions hereto annexed, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto in all cases not herein otherwise specially provided for.

This policy shall not be valid until countersigned by ————, agent of the said company.

In witness whereof, the Chicago Mutual Insurance Company have
195 caused these presents to be signed by their president and secretary, in the city of Chicago.

Attested:

GEO. STEEL,
President.

R. C. BRISTOL,
Secretary.

Chicago, Oct. 8th, 1856.

Received the amount of the within policy in full.

O. S. HOUGH,
C. J. KERSHAW,
Pr. C. J KERSHAW.

Chicago, Dec. 19th.

Endorsed:

Exhibit B.

This policy of insurance was exhibited by me to Richard C. Bristol, one of the witnesses named in the caption of the foregoing deposition, and was testified to by him on this 6th day of March, A. D. 1858, in his said deposition as Exhibit B.

G. W. BALDWIN, *U. S. Com'r.*

Messrs. O. S. Hough & C. J. Kershaw.

No. 369.—$5,000.

Premium	$100
Policy	1
	101

Expires October 8th, '57.

OFFICE STAR INSURANCE COMPANY, STATE OF NEW YORK,
Ogdensburg, October 2d, 1856.

Renewal receipt, No. 89.

Received of Messrs. Watson, Tower & Co. sixteen dollars, being the
196 premium on four thousand dollars insured under policy No. 372, which is hereby renewed for one month, to wit, from the second day of October, 1856, until the second day of Novemer, 1856, at noon.

Not valid until countersigned by W. B. Lounsbury, agent for this company.

B. HOPKINS, *President.*
H. G. FOOTE, *Secretary.*

Countersigned:
W. B. LOUNSBURY, *Agent.*

Exhibit C.—G. W. Baldwin, U. S. Com'r.

The Star Insurance Company of Ogdensburg, N. Y.—No. 372.

By this stock policy of insurance, in consideration of twenty dollars to them paid by the assured hereinafter named, the receipt whereof is hereby acknowledged, do insure Messrs. Watson and Williams, of Chicago, Ill., against loss or damage by fire, to the amount of four thousand dollars, as follows:

On five hundred barrels pork, contained in the packing establishment known as Hough & Co., situate on the south branch of the Chicago river, Chicago, Illinois, with permission to move under sheds adjoining, to be repacked, and to be covered while there.

$5,000 insured elsewhere. Time, 3 mo's. Rate, $\frac{1}{50}\frac{25}{}$.

197 And the Star Insurance Company, above named, for the consideration aforesaid, do hereby promise and agree to make good unto the said assured, their executors, administrators, and assigns, all loss or damage, not exceeding in amount the sum insured, nor exceeding the interest of the assured therein, as shall happen by fire to the property as above specified, from the first day of July, one thousand eight hundred and fifty-six, (at twelve o'clock at noon,) unto the full end and term of three months; thence next ensuing, which term will expire on the first day of October, one thousand eight hundred and fifty-six, (at twelve o'clock at noon,) the said loss or damage to be estimated according to the true and actual cash value of the said property at the time the

same shall happen, and to be paid within three months, after due notice and proof thereof made by the insured, in conformity to the conditions annexed to this policy: Provided always, and it is hereby declared, that this corporation shall not be liable to make good any loss or damage by fire which may happen or take place by means of invasion, insurrection, riot, or civil commotion, or of any military or usurped power, or any loss by theft at or after a fire:

198 And provided further, that in case the assured shall have already made any other insurance against loss by fire on the property hereby insured, and not notified to this corporation, and mentioned in or endorsed upon this policy, then this insurance shall be void and of no effect; and if the said insured, or their assigns, shall hereafter make any other insurance on the same property, and shall not with all reasonable diligence give notice thereof to this corporation, and have the same endorsed on this instrument, or otherwise acknowledged by them in writing, this policy shall cease and be of no further effect; and in case of any other insurance upon property hereby insured, whether prior or subsequent to the date of this policy, the insured shall not, in case of loss or damage, be entitled to demand or recover on this policy any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said property. And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above-mentioned shall at any time after the making of and during

199 the time this policy would otherwise continue in force be appropriated, applied, or used to or for the purpose of carrying on or exercising therein any trade, business, or vocation denominated hazardous or extra-hazardous, or specified in the memorandum of special hazards in the terms and conditions annexed to this policy, or for the purpose of storing therein any of the articles, goods, or merchandise in the same terms and conditions denominated hazardous, extra-hazardous, or included in the memorandum of special hazards, except herein specially provided for, or hereafter agreed to by this corporation in writing, to be added to or endorsed upon this policy, then and from thenceforth, so long as the same shall be so appropriated, applied, or used, these presents shall cease and be of no force or effect. And it is moreover agreed and declared that this insurance is not intended to apply to or cover any books of accounts, written securities, deeds, or other evidences of title to lands, nor to bonds, bills, notes, or other evidences of debt, nor to money or bullion; and that this policy is made and accepted in reference to the terms and conditions hereto annexed, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto in all cases not herein otherwise especially provided for.

200 This insurance (the risk not being changed) may be continued for such further term as shall be agreed on, provided the premium therefor is paid, and a formal renewal receipt given therefor, signed by the president and secretary, and countersigned by the agent, then and there in authority.

The interest of the insured or of any assignee in this policy is not assignable, unless by consent of this corporation, manifested in writing; and in case of any transfer or termination of the interest of the insured, either by sale for the benefit of creditors or otherwise, without such consent, this policy shall from thenceforth be void and of no effect.

NOTICE.—This policy shall not be valid until countersigned by W. B. Lounsbury, agent of the said Star Insurance Company.

In witness whereof, the Star Insurance Company have caused these presents to be signed by their president, and attested by their secretary, at Ogdensburg, New York.

B. HOPKINS, *President.*

H. G. FOOTE, *Secretary.*

Countersigned at Chicago this first day of July, 1856.

W. B. LOUNSBURY, *Agent.*

201 Endorsed :

Exhibit C.

This policy of insurance was exhibited by me to William B. Lounsbury, whose deposition is attached hereto, and was testified to by him as Exhibit C in his said deposition, taken before me this 6th of March, 1858.

G. W. BALDWIN, *U. S. Com'r.*

This policy expires October first, 1856.
Messrs. Watson & Williams.

$4,000.

Premium	$20 00
Policy	1 00
	21 00

W. B. LOUNSBURY, *Agent.*

Exhibit D.—G. W. Baldwin.

Phœnix Insurance Company, of Hartford, Connecticut.—No. 303.

By this policy of insurance the Phœnix Insurance Company, in consideration of fifty dollars to them in hand paid by the assured hereinafter named, the receipt whereof is hereby acknowledged, do insure Messrs. O. S. Hough and C. J. Kershaw against loss or damage by fire, to the amount of four thousand dollars, on their one-story brick building, with basement, connected with their packing establishment, and being about 12 feet from the stone building
202 known as "Hough's packing-house," (connected,) situate on the south branch of the Chicago river, Chicago, Illinois.

And the said company, for the consideration aforesaid, do hereby promise and agree to make good unto the said assured, their executors, administrators, and assigns, all such loss or damage, not exceeding in amount the sum insured, as shall happen by fire to the property as above specified, from the tenth day of April, one thousand eight hundred and fifty-six, (at 12 o'clock at noon,) unto the tenth day of April, one thousand eight hundred and fifty-seven, (at 12 o'clock at noon,) the said loss or damage to be estimated according to the true and actual cash value of the said property at the time the same shall happen, and to be paid within sixty days after due notice and proof thereof made by the insured, and received at this office, in conformity to the conditions annexed to this policy: Provided always, and it is hereby declared, that this company shall not be liable to make good any loss or damage by fire which may happen or take place by means of invasion, insurrection, riot, or civil commotion, or of any military or usurped power, or any loss by theft at or after a fire. And pro-
203 vided further, that in case the assured or any other persons or parties, with the knowledge of the assured, shall have existed during the continuance of this policy, any other insurance against loss by fire on the property hereby insured, and not notified to this company, and mentioned in or endorsed upon this policy, then this insurance shall be void and of no effect.

And in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the insured shall not, in case of loss or damage, be entitled to demand or recover on this policy any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said property.

And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above-mentioned premises shall at any time after the making of and during the time this policy would otherwise continue in force

be appropriated, applied, or used to or for the purpose of carrying on or exercising therein any trade, business, or vocation denominated hazardous or extra-hazardous, or specified in the memorandum of special hazards in the terms and conditions annexed to this policy, or for the purpose of storing therein
204 any of the articles, goods, or merchandise, in the same terms and conditions denominated hazardous and extra-hazardous, or included in the memorandum of special hazards, except herein specially provided for, or hereafter agreed to by this company in writing, to be added to or endorsed upon this policy, then and from thenceforth, so long as the same shall be so appropriated, applied, or used, these presents shall cease and be of no force or effect.

And it is moreover agreed and declared that this insurance is not intended to apply to or cover any books of account, written securities, deeds, or other evidences of title to lands, nor to bonds, bills, notes, or other evidences of debt, nor to money or bullion. And that this policy is made and accepted in reference to the terms and conditions hereto annexed, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto in all cases not herein otherwise especially provided for.

205 This insurance (the risk not being changed) may be continued for such further term as shall be agreed on, provided the premium therefor is paid and endorsed on the policy, or a receipt given for the same.

The interest of the insured in this policy is not assignable, unless by consent of this company, manifested in writing; and in case of any transfer or termination of the interest of the insured, either by sale or otherwise, without such consent, this policy shall from thenceforth be void and of no effect.

This policy shall not be valid until countersigned by the authorized agent of said Phœnix Insurance Company, at Chicago, Ill's.

In witness whereof, the Phœnix Insurance Company have caused these presents to be signed by their president and attested by their secretary, in the city of Hartford.

S. L. LOOMIS, *President.*

H. KELLOGG, *Secretary.*

Countersigned at Chicago this 10th day of April, 1856.

W. B. LOUNSBURY, *Agent.*

Endorsed:

206 *Exhibit D.*

This policy of insurance was shown by me to William B Lounsbury, one of witnesses named in the caption to the foregoing deposition, and was testified to in his deposition taken before me this 6th day of March, 1858, as Exhibit D.

G. W. BALDWIN, *U. S. Com'r.*

This policy expires April 10th, 1857.

Messrs. O. S. Hough and C. J. Kershaw, Chicago, Illinois.

No. 303.—$4,000.

Premium	$50 00
Policy	1 00
	51 00

No. 2218.

Rec'd of Watson, Tower & Co. twenty dollars, being the premium on five thousand dollars insured under policy No. 2178, which is hereby continued in force for one month, to wit, from the 2d day of Oct., 1856, until the 2d day of Nov., 1856, at noon.

Not valid unless countersigned by W. B. Lounsbury, agent at Chi-
207 cago.

JAMES LARIMER GRAHAM, *Pres't.*

E. A. STANSBURY, *Sec'y.*
W. B. LOUNSBURY, *Agent.*

Exhibit E.—G. W. Baldwin, U. S. Com'r.

Stock policy.

The Metropolitan Fire Insurance Company of the city of New York.
No. 2178.—Capital, $300,000.

By this policy of insurance the Metropolitan Fire Insurance Company, in consideration of twenty-five dollars to them paid by the insured hereinafter named, the receipt whereof is hereby acknowledged, do insure Watson & Williams against loss or damage by fire, to the amount of five thousand dollars, on five hundred bbls. pork, contained in the packing establishment known as Hough & Co.'s, situate on the south branch of the Chicago river, Chicago, Ill.,
208 with permission to move under sheds adjoining to be repickled, and to be covered while there.

And the Metropolitan Fire Insurance Company above named, for the consideration aforesaid, do hereby promise and agree to make good unto the said assured, their executors, administrators, and assigns, all such loss or damage, not exceeding in amount the sum insured, as shall happen by fire to the property as above specified, from the first day of July, one thousand eight hundred and fifty-six, (at 12 o'clock at noon,) unto the full end and term of three months thence next ensuing, which term will expire on the first day of Oct., one thousand eight hundred and fifty-six, (at 12 o'clock at noon,) the said loss or damage to be estimated according to the true and actual cash value of the said property at the time the same shall happen, and to be paid within sixty days after due notice and proof thereof made by the insured, in conformity to the conditions annexed to this policy: Provided always, and it is hereby declared, that this corporation shall not be liable to make good any loss or damage by fire which may happen or take place by means of invasion, insurrec-
209 tion, riot, or civil commotion, or of any military or usurped power, or any loss by theft at or after a fire: And provided further, that in case the assured shall have already made any other insurance against loss by fire on the property hereby insured, not notified to this corporation, and mentioned in or endorsed upon this policy, then this insurance shall be void and of no effect. And if the said insured, or their assigns, shall hereafter make any other insurance on the same property, and shall not, with all reasonable diligence, give notice thereof to this corporation, and have the same endorsed on this instrument, or otherwise acknowledged by them in writing, this policy shall cease and be of no further effect. And in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the insured shall not, in case of loss or damage, be entitled to demand or recover on this policy any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured
210 on the said property. And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above-mentioned premises shall, any time after the making of and during the time this policy would otherwise continue in force, be appropriated, applied, or used to or for the purpose of carrying on or exercising therein any trade, business, or vocation denominated hazardous or extra-hazardous, or specified in the memorandum of special hazards in the terms and conditions annexed to this policy, or for the purpose of storing therein any of the articles, goods, or merchandise, in the

same terms and conditions denominated hazardous or extra-hazardous, or included in the memorandum of special hazards, except as herein specially provided for or hereafter agreed to by this corporation in writing, to be added to or endorsed upon this policy, then and from thenceforth, so long as the same shall be so appropriated, applied, or used, these presents shall cease and be of no force or effect. And it is moreover agreed and declared that this
211 insurance is not intended to apply to or cover any books of accounts, written securities, deeds, or other evidences of title of lands, nor to bonds, bills, notes, or other evidences of debt, nor to money or bullion. And that this policy is made and accepted in reference to the terms and conditions hereto annexed, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto in all cases not herein otherwise specially provided for.

This insurance (the risk not being changed) may be continued for such further term as shall be agreed on, provided the premium therefor is paid and endorsed on this policy, or a receipt given for the same.

The interest of the insured of this policy is not assignable, unless by consent of this corporation, manifested in writing; and in case of any transfer or termination of the interest of the insured, either by sale or otherwise, without such consent, this policy shall from thenceforth be void and of no effect.

212 This policy shall not be valid until countersigned by W. B. Lounsbury, agent of said Metropolitan Fire Insurance Company.

In witness whereof, the Metropolitan Fire Insurance Company have caused these presents to be signed by their president and attested by their secretary, in the city of New York, this —— day of ———, in the year of our Lord one thousand eight hundred and fifty ——.

JAMES LORIME GRAHAM, *President.*

E. A. STANSBURY, *Secretary.*

Countersigned at Chicago this 1st day of July, 1856.

W. B. LOUNSBURY, *Agent.*

Endorsed:

Exhibit E.

This policy of insurance was shown by me to William B. Lounsbury, whose deposition is attached hereto, and was testified to by him in his said deposition as "Exhibit E" this 6th day of March, 1858.

G. W. BALDWIN, *U. S. Com'r.*

Expires Oct. 1st, 1856. No. 2178. Watson & Williams. On pork,
213 $5,000. Premium, $25. Hartford Fire Insurance Company. No 315.

Exhibit F.—G. W. Baldwin, U. S. Com'r.

By this policy of insurance the Hartford Fire Insurance Company, in consideration of one hundred dollars to the said corporation paid, the receipt whereof is hereby acknowledged, hath agreed to insure, and doth hereby agree to insure, Messrs. Hough & Kershaw against loss or damage by fire, to the amount of five thousand dollars, on their two-story stone packing-house, with composition roof, owned and occupied by the assured, situated on the south bank of the Chicago river, near Bridgeport.

$5,000. 200c. $100.

And the said corporation doth hereby promise and agree to make good unto the said assured, their executors, administrators, and assigns, all such immediate loss or damage, not exceeding in amount the sum insured, as shall happen by fire to the property, as above specified, from the sixth day of October, one thou-

sand eight hundred and fifty-six, (at noon,) unto the sixth day of October,
214 one thousand eight hundred and fifty-seven, (at noon,) the said loss or damage to be estimated according to the true and actual cash value of the property at the time the same shall happen, and to be paid within sixty days after notice and proof thereof made by the assured and received at this office, in conformity to the conditions annexed to this policy: Provided always, and it is hereby declared, that this corporation shall not be liable to make good any loss or damage by fire which may happen or take place by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power, or of any loss by theft at or after a fire: And provided further, that in case the assured shall have already any other insurance against loss by fire on the property hereby insured, and not notified to this company and mentioned in or endorsed upon this policy, then this insurance shall be void and of no effect. And if the said assured, or their assigns, shall hereafter make any other insurance on the same property, and
215 shall not, with all reasonable diligence, give notice thereof to this company, and have the same endorsed on this instrument, or otherwise acknowledged by them in writing, this policy shall cease and be of no further effect. And if any subsequent insurance should be made upon the property hereby insured, which, with the sum or sums already insured, should, in the opinion of the said Hartford Fire Insurance Company, amount to an over-insurance, said company reserve to themselves the right of cancelling this policy by paying to the insured the unexpired premium pro rata. And in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the assured shall not, in case of loss or damage, be entitled to demand or recover of this company any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said property. And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above-mentioned
216 premises shall, at any time after the making and during the continuance of this insurance, be appropriated, applied, or used to or for the purpose of carrying on or exercising therein any trade, business, or vocation denominated hazardous or extra-hazardous, or specified in the memorandum of special rates in the conditions annexed to this policy, or for the purpose of storing, using, or vending therein any of the articles, goods, or merchandise in the conditions aforesaid, denominated hazardous or extra-hazardous, or included in the memorandum of special rates, unless herein otherwise specially provided for, or hereafter agreed to, by this company in writing, and added to or endorsed upon this policy, then and from thenceforth, so long as the same shall be so appropriated, applied, used, or occupied, these presents shall cease and be of no force or effect.

And it is moreover declared that this insurance is not intended to apply to or cover any books of account, written securities, deeds, or other evidences
217 of title to lands, nor to bonds, bills, notes, or other evidences of debt, nor to money or bullion. And that this policy is made and accepted in reference to the conditions hereto annexed, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto in all cases not herein otherwise specially provided for.

This policy shall not be valid until countersigned by E. K. Rogers, agent of the said company.

In witness whereof, the Hartford Fire Insurance Company have caused these presents to be sealed with their seal, and signed by their president and attested by their secretary, in the city of Hartford and State of Connecticut.

H. HUNTINGTON, *President.*

Attested: C. B. BOWERS, *Secretary.*

Countersigned at Chicago this 6th day of October, 1856.

E. K. ROGERS, *Agent.*

Endorsed:

Exhibit F.

This policy of insurance was exhibited by me to Henry B. Willmarth,
218 one of the witnesses named in the caption of the foregoing depositions, and was testified to by him as "Exhibit F" in his said deposition, taken before me this 6th of March, 1858.

G. W. BALDWIN, *U. S. Com'r.*

Messrs. Hough & Kershaw.

No. 315.—$5,000.

Premium	$100
Policy	1
	101

Expires Oct. 6th, '57.

Exhibit G.—G. W. Baldwin, U. S. Com'r.

Garden City Insurance Company.

No. 191.

By this policy of insurance the Garden City Insurance Company, in consideration of thirty-seven $\frac{50}{100}$ dollars to them paid by the assured hereinafter named, the receipt whereof is hereby acknowledged, do insure O. S. Hough & C. J. Kershaw against loss or damage by fire to the amount
219 of three thousand dollars, as follows: On their stone packing-house, situated on south branch of Chicago river, known as Hough's stone packing-house, $3,000.

Mem.—Loss paid Nov. 6th, 1856, $3,000, as follows:

Cash	$2,962	50
Interest for property	37	50
	3,000	00
$3,000 *a* 1¼	$37	50
	1	00

And the said company do hereby promise and agree to make good unto the said assured, executors, administrators, and assigns, all such immediate loss or damage, not exceeding in amount the sum insured, as shall happen by fire to the property, as above specified, from the 26th day of April, one thousand eight hundred and fifty-six, (at twelve o'clock at noon,) unto the 26th day of April, one thousand eight hundred and fifty-seven, (at 12 o'clock at noon,) the said loss or damage to be estimated according to the true and actual cash
220 value of the property at the time the same shall happen, and to be paid within sixty days after notice, and proof thereof made by the assured, in conformity to the conditions annexed to this policy: Provided always, and it is hereby declared, that this company shall not be liable to make good any loss or damage by fire which may happen or take place by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power, or any loss by theft at or after a fire: And provided further, that in case the assured shall have already any other insurance against loss by fire on the property hereby insured, and not notified to this company and mentioned in or endorsed upon this policy, then this insurance shall be void and of no effect.

And if the said assured or assigns shall hereafter make any other insurance on the same property, and shall not, with all reasonable diligence, give notice thereof to this company, and have the same endorsed on this instrument,
221 or otherwise acknowledged by them in writing, this policy shall cease and be of no further effect.

And in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the assured shall not, in case of loss or damage, be entitled to demand or recover of this company any greater proportion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said property.

And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above-mentioned ——— shall, at any time after the making and during the continuance of this insurance, be appropriated, applied, or used to or for the purpose of carrying on or exercising therein any trade, business, or vocation, denominated hazardous, extra-hazardous, or included in the memorandum of special rates in the conditions annexed to this policy, or for the purpose of storing or vending therein any of the articles, goods,
222 or merchandise in the conditions aforesaid, denominated hazardous, extra-hazardous, or included in the memorandum of special rates, unless herein otherwise specially provided for, or hereafter agreed by this company in writing, and added to or endorsed upon this policy, then and from thenceforth, so long as the same shall be so appropriated, applied, or used, these presents shall cease and be of no force or effect.

And it is moreover declared that this insurance is not intended to apply to or cover any books of account, written securities, deeds, or other evidences of title to lands, nor to bonds, bills, notes, or other evidences of debt, nor to money or bullion; and that this policy is made and accepted in reference to the conditions hereto annexed, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto in all cases not herein otherwise specially provided for.

In witness whereof, the Garden City Insurance Company have caused
223 these presents to be signed by their president and attested by their secretary, in the city of Chicago, and State of Illinois.

W. S. GURNEE, *President.*

TOLMAN WHEELER, *Secretary.*

Exhibit G.

This policy of insurance was exhibited by me to Tolman Wheeler, one of the witnesses named in the caption of the foregoing deposition, and was testified to by him as "Exhibit G" in his said deposition, taken before me this 6th day of March, A. D, 1858.

G. W. BALDWIN, *U. S. Com'r.*

Ætna Insurance Company.

Duplicate. Paid, Nov'r 15th, '56, $5,000 in full for loss by fire Oct., '56. (See receipt book.)

No. 6111.

By this policy of insurance the Ætna Insurance Company, in consideration of sixty-two and $\frac{50}{100}$ dollars to them paid by the assured hereinafter named, the receipt whereof is hereby acknowledged, do insure Hough & Co. five
224 thousand dollars on their salt, barrels, and tierces, contained in the stone packing-house occupied by the assured, and situated on the south branch Chicago river.

Permission is given to assign to R. M. Hough.

April 19th, '56.

Further ins. is permitted without notice to this Co. until required.

And the said company do hereby promise and agree to make good unto the said assured, their executors, administrators, and assigns, all such immediate loss or damage, not exceeding in amount the sum insured, as shall happen by fire to the property, as above specified, from the 19th day of April, one thousand eight hundred and fifty-six, (at 12 o'clock at noon,) unto the nineteenth day of April, one thousand eight hundred and fifty-seven, (at 12 o'clock at noon,) the said loss or damage to be estimated according to the true and actual cash value of the property at the time the same shall happen, and to be paid within sixty days after notice, and proof thereof made by the assured, in conformity to the conditions annexed to this policy: Provided always, and it is hereby
225 declared, that this company shall not be liable to make good any loss or damage by fire which may happen or take place by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power, or any loss by theft at or after a fire: And provided further, that in case the assured shall have already any other insurance against loss by fire on the property hereby insured, and not notified to this company, and mentioned in or endorsed upon this policy, then this insurance shall be void and of no effect.

And if the said assured or their assigns shall hereafter make any other insurance on the same property, and shall not, with all reasonable diligence, give notice thereof to this company, and have the same endorsed on this instrument, or otherwise acknowledged by them in writing, this policy shall cease and be of no further effect. And in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy,
226 the assured shall not, in case of loss or damage, be entitled to demand or recover of this company any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said property. And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above-mentioned premises shall, at any time after the making and during the continuance of this insurance, be appropriated, applied, or used to or for the purpose of carrying on or exercising therein any trade, business, or vocation denominated hazardous, extra-hazardous, or included in the memorandum of special rates in the conditions annexed to this policy, or for the purpose of storing or vending therein any of the articles, goods, or merchandise, in the conditions aforesaid, denominated hazardous, extra-hazardous, or included in the memorandum of special rates, unless herein otherwise specially provided for or hereafter agreed by this company in writing, and added or endorsed upon this policy, then and from
227 thenceforth, so long as the same shall be so appropriated, applied, or used, these presents shall cease and be of no force or effect.

And it is moreover declared that this insurance is not intended to apply to or cover any books of account, written securities, deeds, or other evidences of titles to lands, nor to bonds, bills, notes, or other evidences of debt, nor to money or bullion.

And that this policy is made and accepted in reference to the conditions hereto annexed, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto in all cases not herein otherwise specially provided for.

This policy shall not be valid until countersigned by the duly authorized agent of said Ætna Insurance Co. at Chicago, Ills.

In witness whereof, the Ætna Insurance Company have caused these presents to be signed by their president and attested by their secretary, in the city of Hartford and State of Connecticut.

E. G. RIPLEY, *V. President.*

THO. A. ALEXANDER, *Secretary.*

228 Countersigned at Chicago this 19th day of April, A. D. 1856.
G. S. HUBBARD, *Agent*.

Endorsed:

Exhibit H.

This policy of insurance was exhibited by me to Charles H. Hunt, one of the witnesses named in the caption to the foregoing deposition, and was testified to by him in his deposition taken before me this 6th day of March, 1858, as "Exhibit H."

G. W. BALDWIN,
U. S. Com'r.

Expires 19th April, 1857. No. 6111. Hough & Co. $5,000.

Premium	$62 50
Policy	1 00
	63 50

Exhibit I.—G. W. Baldwin, U. S. Commissioner.

Ætna Insurance Company.—No. 6110.

By this policy of insurance the Ætna Insurance Company, in consideration of sixty-two and $\frac{50}{100}$ dollars to them paid by the assured hereinafter
229 named, the receipt whereof is hereby acknowledged, do insure Hough & Kershaw against loss or damage by fire to the amount of five thousand dollars ($5,000) on their stone packing-house, on the south branch Chicago river.

Duplicate. Paid Nov. 15th, '56, $5,000, in full for loss by fire. Oct., '56. (See receipt book.)

Further insurance is permitted without notice to this Co. until required.

And the said company do hereby promise and agree to make good unto the said assured, their executors, administrators, and assigns, all such immediate loss or damage, not exceeding in amount the sum insured, as shall happen by fire to the property, as above specified, from the 19th day of April, one
230 thousand eight hundred and fifty-six, (at 12 o'clock at noon,) unto the nineteenth day of April, one thousand eight hundred and fifty-seven, (at 12 o'clock at noon,) the said loss or damage to be estimated according to the true and actual cash value of the property at the time the same shall happen, and to be paid within sixty days after notice, and proof thereof made by the assured, in conformity to the conditions annexed to this policy: Provided always, and it is hereby declared, that this company shall not be liable to make good any loss or damage by fire which may happen or take place by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power, or any loss by theft at or after a fire: And provided further, that in case the assured shall have already any other insurance against loss by fire on the property hereby insured, and not notified to this company, and mentioned in or endorsed upon this policy, then this insurance shall be void and of no effect.

And if the said assured or their assigns shall hereafter make any
231 other insurance on the same property, and shall not, with all reasonable diligence, give notice thereof to this company, and have the same endorsed on this instrument, or otherwise acknowledged by them in writing, this policy shall cease and be of no further effect.

And in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the assured shall not, in

case of loss or damage, be entitled to demand or recover of this company any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said property.

And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above-mentioned premises shall, at any time after the making and during the continuance of this insurance, be appropriated, applied, or used to or for the purpose of carrying on or exercising therein any trade,
232 business, or vocation denominated hazardous, extra-hazardous, or included in the memorandum of special rates in the conditions annexed to this policy, or for the purpose of storing or vending therein any of the articles, goods, or merchandise, in the conditions aforesaid, denominated hazardous, extra-hazardous, or included in the memorandum of special rates, unless herein otherwise specially provided for, or hereafter agreed by this company in writing, and added to or endorsed upon this policy, then and from thenceforth, so long as the same shall be so appropriated, applied, or used, these presents shall cease and be of no force or effect.

And it is moreover declared that this insurance is not intended to apply to or cover any books of account, written securities, deeds, or other evidences of title to lands, nor to bonds, bills, notes, or other evidences of debt, nor to money or bullion; and that this policy is made and accepted in reference to the conditions hereto annexed, which are to be used and resorted to in order to explain
233 the rights and obligations of the parties hereto in all cases not herein otherwise specially provided for.

This policy shall not be valid until countersigned by the duly authorized agent of said Ætna Insurance Co. at Chicago, Illinois.

In witness whereof, the Ætna Insurance Company have caused these presents to be signed by their president and attested by their secretary, in the city of Hartford and State of Connecticut.

THO. K. BRACE, *President.*

THO. A. ALEXANDER, *Secretary.*

Countersigned at Chicago this nineteenth day of April, A. D. 1856.

G. S. HUBBARD, *Agent.*

Endorsed:

Exhibit I.

This policy of insurance was exhibited by me to Charles H. Hunt, a witness named in the caption to the foregoing deposition, at his examination held before me, this 6th day of March, A. D. 1858, and was testified to by him in
234 his said examination as Exhibit I.

G. H. BALDWIN, *U. S. Com'r.*

Expires 19th April, 1857. No. 6110. Hough & Kershaw. $5,000.

Premium	$62 50
Policy	1 00
	63 50

Exhibit J.—G. W. Baldwin, U. S. Com'r.

Sept. 15, 1856. Policy No. 3302. Hough & Co.

$10,000 on cooperage in stone building in other Co,'s.

3,000 on cooperage situated in the stone building used by them as a packing-house, on S. branch.

2,000 on salt and cooperage in the shed adjoining said building on the dock, for 6 mos.

5,000 @ $\frac{200}{140}$	$70
P'l'y	1
	71

Exhibit J.

This paper was shown by me to R. C. Wheeler, one of the witnesses named in the caption to the foregoing deposition, and was referred to by him in his
235 deposition taken before me, this 6th of March, 1858, as "Exhibit J."

G. W. BALDWIN, *U. S. Com'r.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, George W. Baldwin, a commissioner duly appointed by the circuit court of the United States for the northern district of Illinois, under and by virtue of the act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States, passed February 20th, 1812, do hereby certify that the reason for taking the foregoing deposition is that the testimony of the witnesses aforesaid is necessary in the cause in the caption of the said deposition named; that the parties, both libellants and claimants, consented, through their respective proctors, to the taking of the same before me; that the said parties were duly notified of the time and place of taking
236 said depositions, and were both represented at the examination.

That on the fifth and sixth days of March, in the year of our Lord one thousand eight hundred and fifty-eight, I was attended by Messrs. Hooper & Causine, proctors for the claimants, and by A. W. Arrington, esq., one of the proctors for the libellants, and by the said witnesses.

That each of the said witnesses was by me first carefully examined and cautioned, and sworn to testify the truth; and the testimony by him given was by me reduced to writing, and thereafter subscribed by the said witness in my presence; and that I am not of counsel or attorney to either of the parties, nor in any way interested in the event of the cause named in the said caption.

Witness my hand and official seal this 6th day of March, A. D. 1858.

[SALE.]

G. W. BALDWIN,
U. S. Com'r for North'n Dist. of Ill's.

Endorsed: Received open from hand of the commissioner, and filed March 11th, 1858.

WM. H. BRADLEY, *Clerk.*

(Here follows map marked "K," page 237; map marked "M," page 237.)

237 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

On this ninth day of March, in the year of our Lord one thousand eight hundred and fifty-eight, before me, George W. Baldwin, a commissioner duly appointed by the circuit court of the United States for the northern district of Illinois, under and by virtue of the act of Congress "for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, personally appeared at the office of E. R. Hooper, in the city of Chicago, in the said northern district of Illinois, Volney E. Rusco[illegible], George Steele, and David Howard, witnesses on the part of the libellants, in a certain civil cause of admiralty and maritime jurisdiction now depending and undetermined in the district court of the United States for the northern district

of Illinois, wherein O. S. Hough, Charles I. Kershaw, and Charles H. Seaverns are libellants, and the Western Transportation Company are respondents.

Direct exam'n.—Volney E. Ruscoe.

And the said Volney E. Ruscoe, having been by me first duly cautioned, and sworn to testify the whole truth, did thereupon depose and say:

I reside in Chicago; I am a carpenter by trade; I was well acquainted with Hough's packing-house buildings that were destroyed by fire at the burning of the Falcon; I estimated with Mr. Price, another carpenter, the damage
238 done to the wood work of said buildings by the said fire; we were requested to make this estimate by Mr. Hough. The estimate on the stone packing-house was eleven thousand six hundred and nine dollars and sixty cents, ($11,609 60.) The estimate on the brick packing-house was $1,902 $\frac{15}{100}$, (nineteen hundred and two dollars $\frac{15}{100}$.) This doesn't include the sheds that were destroyed at the same time. I should think there was not less than $2,000 worth of damage done to the sheds. The buildings were a total loss; we so estimated them; I was well acquainted with the buildings before, and was at work there the night before the fire; I saw the propeller at the dock the night she was burned, while I was at work. She lay close to the dock, and right alongside of it directly in front of the packing-house; I did not view her very closely; I asked some of the men about the packing-house whether the propeller was going to load there; they replied no, she was only tied up for the night. The vessel couldn't have been aground in the position I saw her. There was from eight to twelve feet of water abreast of the wharf where the Falcon then lay; neither the bow or stern of the propeller was near the bar which lies opposite the slough. I don't remember which end of the boat lay towards this slough.

Cross-examination.

239 And the said witness, being cross-examined on the part of the claimants, thereupon further testified as follows:

I came out of the packing-house door when I first saw the propeller; this door was about fifty feet from the edge of the dock. I went about half way to the dock, and then went round the house to the street. I didn't pay any particular attention to the vessel; I think it was not foggy at that time. The bar that I spoke of lies about 20 or 25 feet from the west end of the dock, on the opposite side of the slough; the propeller would have been aground had she been on that bar. When I came out of the packing-house I went directly towards the boat under the shed, which covered the whole dock. I couldn't see the upper deck of the vessel; I couldn't see the western corner of the dock towards the slough, for there was a salt-house in the way. I could only see that part of the propeller which lay between the roof and the floor of the shed; this was the only view I had of the propeller. The edge of the shed comes within six inches or a foot of the water-line of the dock—as close as they could build it without interfering with the vessels loading there. The bottom of the river slopes from the dock; five or six feet from the dock the river is eight or nine feet deep. The packing-house door is in the centre of the house,
240 but was west of the centre of the shed, towards the slough, as much as twenty or twenty-five feet, I should think. When I went away I left the watchman there in the building; also Mr. Hough and one or two others. I think the watchman boarded near the packing-house; he was not a married man.

Direct exam'n resumed.

And the said witness, being further examined on the part of the libellants, thereupon testified as follows:

The watchman was employed to watch the meat on the dock, and see that none was stolen, and take a general oversight of the premises. I judged that the end of the vessel was not near the bar from the position of her gangway.

V. E. RUSCOE.

Taken, subscribed, and sworn to, before me, this ninth day of March, 1858.

G. W. BALDWIN, *U. S. Com'r.*

George Steele.

And the said George Steel, having been by me first duly cautioned, and sworn to testify the whole truth, did thereupon depose and say:

I reside in Chicago; I was one of the arbitrators appointed by some of the insurance co.'s to examine the damage to the salt in Hough's packing-house, occasioned by the fire in October, 1856. I am well acquainted with the damage done to it. It appears by my books that the damage amounted to fifty per cent.; I examined it, and that was my estimate; that is what the insurance co.'s paid as the damage done to it.

241 *Cross-exam'n.*

And the said witness, being cross-examined further, testified as follows:

I examined all the salt; I don't think we made any estimate of the quantity. We took Mr. Hough's figures as correct.

GEO. STEEL.

Taken, subscribed, and sworn to, before me, this 9th day of March, 1858.

G. W. BALDWIN,
U. S. Com'r.

Adjourned to March 10th.

The further examination of the witnesses was here postponed till to-morrow afternoon, March 10th, 1858, at 4 o'clock.

Pursuant to adjournment I resumed the examination this 10th day of March, 1858, at 4 o'clock, when David Howard, Cornelius Peirce, and Michael McDermott, witnesses as aforesaid, personally appeared before me.

David Howard.

And the said Howard, having been by me first duly cautioned, and sworn to testify the whole truth, did thereupon depose and say:

I reside in Chicago; I am a mason and builder by profession; I built the stone work of the stone packing-house of Hough & Co. that was destroyed at the burning of the Falcon. The gross amount of the damage done to the said stone work of the packing-house, as estimated by Mr. Price and myself after the fire, amounted to $\$7{,}289\frac{26}{100}$. The gross amount of damage done to the brick work of the brick packing-house was $\$2{,}831\frac{20}{100}$, according to

242 the estimate; that was a correct estimate, according to my opinion now.

Cross-exam'n.

And the said witness, being cross-examined, thereupon testified as follows:

The stone building was put up in 1853; I don't recollect its cost; I didn't put up the brick building; that was put up the next year. I was familiar with the brick building, and built an addition to it myself. The two houses were on the same front line with each other; they were about fifteen feet apart. The sheds were attached to the building. The height of the sheds, where they joined the buildings, I never measured; I should think from twelve to fifteen feet.

Direct exam'n resumed.

And the said witness, being further examined in behalf of said libellants, further testified as follows:

I estimated the loss, not as a partial but a total loss.

Cross-exam'n resumed.

And the said witness being again cross-examined in behalf of claimants, further testified as follows:

I was called on by Mr. Hough to make this estimate, in order to ascertain the amount due from the insurance companies.

D. H. HOWARD.

Taken, subscribed and sworn to before me, this 10th day of March, 1858.

G. W. BALDWIN,
U. S. Com'r.

Cornelius Price.

243 And the said Cornelius Price, having been by me first duly cautioned and sworn to testify the whole truth, did thereupon depose and say:

I have heard the foregoing deposition, and know the same to be true in substance and fact. I made the estimates with Mr. Howard. I made the estimate in behalf of the insurance companies.

CORNELIUS PRICE.

Taken, subscribed and sworn to before me, this 10th day of March, 1858.

G. W. BALDWIN, *U. S. Com'r.*

Direct exam'n.—Michael McDermott.

And the said Michael McDermott having been by me first duly cautioned and sworn to testify the whole truth, did thereupon depose and say:

I reside in Chicago. I am a surveyor. In March, 1853, I made a survey of the premises occupied by Hough & Co., with their packing-house.

This portion of the testimony of Michael McDermott was objected to by the proctor for the respondents.
G. W. BALDWIN,
U. S. Com'r.

I have also this day again taken a survey of said premises. The line of his lot extends in front, toward the river, eight inches beyond the west corner of the wharf, and eight and $\frac{6}{10}$ feet beyond the east corner of said wharf. The present line of the wharf is the same with the line of the old wharf which was destroyed at the burning of the packing-house.

The packing-house and wharves occupy lots three, four, and five in
244 block one, in the south fractional section 29, in township 39, range 14, E. of 3d p. m. The packing-houses and wharf in front of them are in lots four and five, and the wharf extends along lot three.

Exhibit M.

A chart or plot, marked by me "Exhibit M," and filed with the papers in this case, was here exhibited to the witness, who, after examining the same, thereupon testified thereto as follows:

The chart now shown me, marked "Exhibit M," contains a plot of the premises of Hough & Co., before referred to, and was made by me this day. It is a correct representation of the survey of said lots, and the relative situation of the packing-house with reference to the river, wharves, slough, roads, streets, &c. I know it to be accurate in all respects. The depth of water at different dis-

tances from the dock, as ascertained by actual measurement made this day, is correctly indicated by figures on the said chart. The depth of the river was taken by me at the distances of 6 and 10 feet from the wharves respectively. The wharf is indicated by a double line. These premises are on the west side of Halsted street, and out of the city limits. They are five chains and a half west of Halsted street.

Exhibit K.

(The chart marked by me "Exhibit K," and filed with the papers in this suit, was here shown to the witness, who thereupon testified as follows:)

245 The chart shown me, marked "Exhibit K," shows, correctly, the relative position of the lots with Halsted street. There has been no dredging at Hough & Co.'s dock, in the river, since the fire. I think the river was higher at the time of the fire than it is now. In 1854 I think the water in the river was at its lowest point. It takes about two years and a half for it to reach its maximum height, and then it begins to abate again, and so continues to fluctuate periodically. In two and a half years it varies from three to four feet.

Cross-exam'n.

And the said witness being cross-examined on the part of the claimants, thereupon further testified as follows:

Sometimes the wind raises the water considerably. I never observed the effect of a n.-west wind, but I have noticed that a n.-east wind will raise the water very materially at times. I do not know what was the depth of the river at Hough & Co.'s dock on the night of the 17th of October, 1856. I recollect the night of the fire. My impression is that it was a calm night. From Water street to the west end of the wharf the distance is three chains and eighty-nine links. From Water street to the east line of the wharf the distance is three chains, ninety-six links. This measurement has been made since the

246 wharf was re-built, and indicates the present distance between the two points. There is a street laid out at Water street, and a corner-post there, from the centre of which I measured.

Adj'd to M'ch 11, 4 *p. m.*

The further examination was here postponed till to-morrow afternoon, March 11th, 1858, at 4 o'clock.

G. W. BALDWIN, *U. S. Com's'r.*

Adj'd to March 12, 3 *p. m.*

March 11th, 1858, 4½ o'clock p. m.

The said witness not appearing, the examination is again postponed till Friday, March 12th, at 3 o'clock p. m.

G. W. BALDWIN, *U. S. Com's'r.*

Friday, March 12th, 3½ o'clock p. m.

In pursuance of adjournment, personally appeared before me, at this hour, the said Michael McDermott and one George Scott. And the said McDermott having been again cautioned and sworn by me to testify the whole truth, thereupon further testified as follows:

(The witness here produced the chart, before testified to by him as "Exhibit M;" and certain alterations appearing upon said chart, which said witness deposed were added by him since his former testimony, and the filing of said

chart as an exhibit, the introduction of the said chart, so altered, in evidence, was here objected to by the proctors for the respondents; when it was agreed, between the proctors for the libellants and the proctor for the respond-
247 ents, that the alterations so made by said witness, and which are indicated by red lines and red figures on said chart, should be considered as cancelled, and should not be used in any way in evidence on the trial of said cause.)

Direct exam'n.

I measured the side lines of the lots comprising Hough's packing-house premises at three different places, to wit: the east line of lot three, from Water street to the dock, which was three chains, 96 links; the east line of lot 4, from Water street to the dock, which was 3 chains, 85 links; the west line of lot 5, from Water street to the wharf, which was 3 chains, 89 links long. I have stated that the night of the fire was a calm night. I remember that there was not much wind, and that it was foggy. I have spoken of a periodical rise of the river every 2½ years. The only other rise that it is subject to is occasioned by the wind. It is also subject to a fall as well as rise from the same cause. I couldn't tell the variation in the depth of the river occasioned by the wind. I have seen the river raised from two to three feet during a strong n. e. wind. In the spring the freshets sometimes affect it considerably.

And the said witness, being cross-examined on the part of the
248 respondents, further testified as follows:

There is scarcely any current in the Chicago river, unless after a rain.

MICH'L McDERMOTT.

Mick'l McDermott.

And the said Michael being again interrogated on the part of respondents, further testified as follows:

I have spoken in my foregoing testimony of a post on Water street, from which I measured to the west end of Hough's wharf. The post is about 6 inches in diameter, and on the inner side of Water street, toward the wharf.

MICH'L McDERMOTT.

Taken, subscribed, and sworn to this 12th day of March, A. D. 1858, before me.

G. W. BALDWIN,
United States Commissioner.

Geo. Scott.

And the said George Scott, having been by me first duly cautioned and sworn to testify the whole truth, did thereupon depose and say:

My name is George Scott. I have been examined in this case before in reference to the burning of the Falcon. I was employed as watchman on the premises of Hough & Co. the night of the fire. Hough & Co gave me orders not to allow any vessels to tie up at their wharf unless they wanted either to load or unload something there for the packing-house. When I first
249 saw the propeller Falcon they were tying her up to the wharf.

Interrogatory by libellants' proctor. Didn't you see her coming down the stream?

(Question objected to by claimants' proctor.)

Answer. I never saw her till she was tying up to the dock. I don't know who fastened the vessel. I saw a man fasten a line from the propeller to a pile on the wharf when I went out, but I don't know who it was. I don't know

which way he came. I talked to a man on the boat and to the man who was tying her up, and told them they mustn't tie up there; that I had orders from Hough & Co. not to allow any vessel to lay up at their dock unless they wanted to load or unload something for the packing-house. After the vessel took fire I had to go to four different houses to wake the men employed at the packing-house. I had to go about seventy rods in going to these houses.

Cross-exam'n.

And the said witness, being cross-examined on the part of the respondents, thereupon further testified as follows:

I am now in the employ of Edward Silver. I didn't see where the man went to who was tying up the vessel. I left him on the dock and went back to attend to the packing-house. I quit the employ of Hough & Co. last
250 March, about the 25th of the month. It was about 8½ p. m. that I saw the Falcon tying up at Hough's dock. I looked at my watch at that time.

his
GEORGE + SCOTT.
mark.

Taken, subscribed, and sworn to this 12th day of March, A. D. 1858, before me.

G. W. BALDWIN, *U. S. Com's'r.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, George W. Baldwin, a commissioner duly appointed by the circuit court of the United States for the northern district of Illinois, under and by virtue of the act "for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, do hereby certify that the foregoing depositions were taken before me by the mutual consent and agreement of the proctors for the libellants and respondents in the cause in the caption of the said deposition named; that the said proctors were duly notified of the time and place of taking the said depositions; that the libellants were represented at said examination by A. W. Harrington, one of their proctors, and the respondents were represented by J. M. Causine, esq., one of their proctors; that on the ninth day of March, 1858, the tenth
251 day of March, 1858, and the twelfth day of March, 1858, respectively, I was *I was* attended by the said proctors and the said witnesses; that each of the witnesses was by me carefully examined and cautioned, and sworn to testify the truth, and the testimony by him given was by me reduced to writing, and thereafter subscribed by the said witness in my presence; and that I am not of counsel or attorney to either of the parties, nor in any way interested in the event of the cause named in the said caption.

G. W. BALDWIN,
United States Commissioner for the Northern District of Illinois.

Endorsed: Handed in by the com's'r and filed March 13th, 1858.
WM. H. BRADLEY, *Clerk.*

252 The oral testimony of Rollin Robinson, on the part of the respondents, taken in open court upon the hearing of this cause, on the thirty first day of March, in the year last aforesaid, is in the words and figures following, to wit:

Rowley Robinson sworn. Called by respondents; examined by Mr. Hooper:

Q. Did you know the propeller Falcon?

A. Yes, sir; I was the agent of the company that run her.

Q. Do you know the value of her at the time she was burned?

A. It is either $25,000 or $28,000 she was worth, I think; my impression is now $28,000; I am not positive. (See addition 1st.)

Q. Do you know who was on board of her at the time she was burned?

A. No; only as I have been informed.

Q. Do you know whether any of the owners were on board at the time?

A. No, sir.

Q. Do you know who she belonged to?

A. The Western Transportation Company.

Q. Do you know the members of the company?

A. I know the directors; not the stockholders.

253 Q. Were any of them on board?

A. No, sir.

Q. Any of the officers of the W. T. Co.?

A. No, sir.

Q. Would the agent here at the time be likely to know if any of the directors or stockholders were on board?

A. Yes, sir.

(Reporter reads the above notes. Witness adds, at the place indicated by figure 1st, "She was valued at that by the appraisers."

Respondents' depositions.

The depositions on the part of the respondents, filed in said court in said entitled cause, and read in evidence upon the hearing of the same, are in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Be it remembered, that on this nineteenth day of November, in the year one thousand eight hundred and fifty-seven, I, J. Tilden Moulton, a commissioner duly appointed by the circuit court of the United States for the northern district of Illinois, under and by virtue of the act of Congress entitled "An
254 act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did cause personally to appear before me, at my office in the city of Chicago, in said northern district of Illinois, to testify on the part of the libellants in a certain cause depending in the district court of the United States for the northern district of Illinois, at Chicago, wherein Oramel S. Hough, Charles J. Kershaw, and Charles H. Seaverns are libellants, and the Western Transportation Company is respondents.

And the said John Dorsey was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid. I carefully examined the said John Dorsey, and he did thereupon depose and say as follows, to wit:

(Libellants' proctor objects to the witness on the ground of interest.)

255 1 question. State your age, residence, and occupation.

Ans. I was twenty-five years of age last March; reside in Detroit; am engineer and machinist.

2 ques. State whether or not you have, for some time, been engaged upon the lakes; if so, in what capacity, and how long?

Ans. This is my second season; as engineer.

3 ques. On what vessel were you engaged during the year 1856, and what was the situation which you held on board at that time?

Ans. The propeller Falcon; as second engineer.

4 ques. State whether or not you were on board of said propeller when she was burned at Chicago, in October, 1856.

Ans. I was.

5 ques. State whether she had any cargo on board at that time; and if so, when and where it was taken on board.

Ans. I don't know the names of the places where it was taken on board. She had cargo on board at that time. I don't recollect the day of the month it was taken on board; it was the day before she was burned.

256 6 ques. What were the last articles taken on board?

Ans. Beef. I don't know whether it was beef or pork. It was in barrels.

7 ques. Was the place where it was taken on board above or below where she was burned?

Ans. It was above.

8 ques. When did she finish taking in her cargo, and start to come down the river?

Ans. About half past five, or somewheres in that neighborkood, in the afternoon.

9 ques. At what time did she reach the wharf where she tied up?

Answer. About half past six.

10 ques. State if you know the reason for tying up at that time.

Ans. Foggy weather.

11 ques. Describe particularly the condition of the weather at that time.

Ans. Very thick and foggy, so that you would not see a man at the distance of fifteen feet—ten to fifteen feet.

257 12 ques. State if you were on duty at the time, as you were coming down the river.

Ans. I was.

13 ques. State whether any attempt was made to wind the vessel before you reached the point where you tied up; and if so, at what point, and how did you succeed?

Ans. There was an attempt to wind her, and it appears they did not succeed, and we came down to the dock stern first; I couldn't tell at what point.

14 ques. How long were you trying to wind the vessel? And state whether you had any assistance; if so, what.

Ans. It was probably half an hour; I do not know whether they had any assistance or not.

15 ques. State whether or not you saw any man upon the wharf when you tied up, and who fastened the lines of the propeller to the wharf.

Ans. I saw a man upon the wharf; I don't know who and what he was. The man that was on the wharf fastened the lines of the propeller to the wharf.

258 16 ques. State whether you heard any objection made by any person ashore to your stopping there.

Ans. I did not.

17 ques. State whether you had steam up in more than one boiler at that time.

Ans. We did not; there was no fire under but one boiler.

18 ques. State whether or not the fires were put out that evening; if so, at what time, and by whom?

Ans. About seven o'clock; by the fireman?

19 ques. State whether or not you were present at the time; if so, state in what manner the fire was extinguished.

Ans. I was. It was extinguished by water.

20 ques. What did you do after the fires were extinguished?

Ans. I sat in the engine-room till the steam went down to about five pounds, and then I went to supper. After supper I sat in the cabin about half an hour or an hour, and then I went round and looked into the fire-room and engine-room to see that all was safe for the night.

259 21 ques. State at what time you were aroused in the night, and all that transpired after that time.

Ans. Between three and four o'clock I heard one of the firemen calling the deck hands—that the boat was on fire; and being unwell that night, I did not sleep soundly. I jumped up and called Mr. Daly, the first engineer, and told him the boat was on fire. I ran out and went aft, where the fire was, with nothing but my pants on, and commenced throwing water down the hatchway, where the fire was seen coming up, or flames; and when the water was exhausted that was in the casks that we used from, Mr. Daly made the remark that it was impossible to save the vessel, and that we would better try to save some of our clothes. We started for our room and got hold of my trunk, with about half of my clothing in it, and threw it on the dock. I then followed and got on the dock myself; and then I waited about a minute and I called to Mr. Daly that he would better leave the vessel, as there was danger of the promenade deck falling in. He waited a few seconds, and then he came out with his trunk and threw it on the dock, and he got out on the dock himself, and he went along the dock with his trunk and got into the small boat, where there were

260 a number of others, and he told me to follow him, as there was no way to get off the dock but by means of the water, the packing-house being closed up. We got into the boat and then waited a short time—a few minutes—for the captain and second mate, who were still on the vessel, the captain being the last one to leave the vessel. We got ashore, took out our baggage; the captain sent some of the men out on to the street and told them to halloo fire as loud as they could, and keep on and go to the city, and go to the first engine-houses they could find and make known the fire. In the mean time he sent a couple of men after an auger to scuttle the vessel with. When they came with the auger, the second mate, with some of the men in the small boat, went to her and commenced to scuttle her, and while so doing the spar fell over into the boat and injured some of the men. They succeeded in scuttling her, and then came back. The boat was a complete mass of flames by that time, fore and aft. We staid there a short spell longer, and then the captain, Mr. Daly, and myself, started to come towards the city. The packing-house was then on fire. We started up the road towards the city, and met an engine on the way, and directed them to where

261 the fire was. It was so foggy they could not see it. We arrived at the City Hotel, corner of Lake and State streets, about half past five or six o'clock. The captain left the crew near the vessel under the charge of the first mate, to do and render all the assistance that was necessary, that could be done.

22 ques. State whether any alarm was given before the crew left the propeller. If so, by whom, and in what way?

Ans. None given, only what was given by the crew of the propeller. There was fire hallooed by some of the crew of the propeller, and by the deck hands.

23 ques. In what part of the vessel was the fire when first discovered by you, and what progress had it made at that time?

Ans. The after part of the vessel was all on fire between her main and promenade decks.

24 ques. What progress had the flames made when the crew quit the vessel?

Ans. It had reached the forward part of the vessel.

25 ques. What was the state of the weather at this time?

Ans. Very foggy.

262 26 ques. What part of the vessel did you get off from when you went ashore?

Ans. Very near amidships; right under my room.

27 ques. State whether you saw or heard any one on the dock while you was there.

Ans. I see or heard no one but Mr. Daly.

28 ques. State whether the vessel was afloat or aground at the time that the crew left it.

Ans. She was aground.

29 ques. In what part was she aground?

(Obj'd to.)

Ans. In the forward part.

30 ques. State whether you saw any person upon the dock, or heard any person calling to you from the dock, while you were going ashore in the small boat.

Ans. Two of our firemen called to be taken on board; they were on the dock; I knew them by their voices; whether there was any more with them or not I don't know.

31 ques. State whether, at this time, you heard any request from any one on shore to assist in moving the vessel from the dock.

Ans. I did not hear any.

263 32 ques. State whether anything was said among yourselves, at that time, in regard to moving the vessel; if so, what was it?

(Obj'd to.)

Ans. I do not remember of hearing anything.

33 ques. How long was it after you left the vessel before you saw any persons on the dock besides the crew?

Ans. I think it was nearly fifteen minutes.

34 ques. How far had the fire progressed at this time?

Ans. I could see nothing but flame and smoke at that time; the vessel was all on fire, and had spread on to the dock then.

35 ques. State whether or not the sheds or buildings on the dock were also on fire at this time.

(Obj'd to.)

Ans. They were, near the after end of the boat.

36 ques. How long was it after you left the vessel; was it before the shed on the dock took fire?

Ans. I should judge about fifteen minutes.

37 ques. State particularly as to the state of the fog and darkness at the time you left the vessel, and how far you were able to discern objects.

Ans. Not over ten feet.

264 38 ques. State whether any one left the vessel before you did.

Ans. The watchman and one of the deck hands did; they were the only ones that I knew of.

Cross-examined by Mr. Hosmer.

1 c. ques. State whether or not it was not very foggy at the time the propeller left the last before moving to go down the river.

Ans. It was foggy; not very.

2 c. ques. Was it not very foggy all day the 17th of October, 1856; and did it not grow thicker towards night.

Ans. It was foggy, not very, during the day, and it grew thicker coming in night.

3 c. ques. Was it not very foggy that day at about five in the afternoon?
Ans. It was foggy, but not very.
4 c. ques. Was it very foggy that day about six in the afternoon?
Ans. It was.
5 c. ques. State at what time it began to be very foggy that day.
265 Ans. It began about six o'clock.
6 c. ques. Is the channel of the south branch of the Chicago river crooked and difficult of navigation?
Ans. It is some crooked; I don't know whether it is difficult or not.
7 c. ques. Did you have anything to do with navigating said propeller at the time above referred to?
Ans. I worked the engines; if that is navigating the vessel, I done so.
8 c. ques. Where were you when the said vessel was attempted to be winded?
Ans. I was in the engine-room.
9 c. ques. So you know of your own knowledge that an attempt was made to wind said propeller before she moored the night of the seventeenth?
Ans. I do. I see her laying athwart-ships of the main creek, with her bow up into a slip, and running lines.
10 c. ques. When you reached the dock where she moored that night, state whether or not it was very foggy; and if so, how far you could discern a man from the vessel.
266 Ans. It was very foggy; you could discern a man, probably, from ten to fifteen feet.
11 c. ques. Where was you when the propeller neared to and arrived at the dock where she moored?
Ans. I was in the engine-room.
12 c. ques. What was you doing there?
Ans. I was not doing anything.
13 c. ques. Where was you when you saw the man on the dock?
Ans. I was at the after gangway.
14 c. ques. Where was the man that you saw?
Ans. He was on the dock; I couldn't tell distinctly, it was so thick; he was towards the forward part of the vessel.
15 c. ques. How long was said propeller?
Ans. I don't know; probably near two hundred feet.
16 c. ques. How many feet from the after gangway to the forward part of the vessel?
Ans. About a hundred and sixty feet.
267 17 c. ques. How many feet from the after gangway to the dock?
Ans. The after gangway was close up to the dock; about two feet.
18 c. ques. How many feet was it from the after gangway to where you saw that man standing on the dock?
Ans. He was walking at the time I see him.
19 c. ques. Which way was he walking; and was he then forward or aft of mid-ships?
Ans. He was nearly amid-ships, walking forward.
20 c. ques. How far did he go forward; and did you see him do anything; if so, what?
Ans. I do not know how far he went forward; I didn't see him after that, as I went into the engine-room; I didn't see him do anything.
21 c. ques. Where was that man standing when you saw him fasten the lines of the propeller?
268 Ans. I did not see him after the time that I came to the engine-room.
22 c. ques. Did you see any other man on the dock at that time, or while the propeller was moving, except the one above referred to?

Ans. I did not.

23 c. ques. Did you see that man fasten any lines belonging to the propeller to the dock; and if so, where was it?

Ans. I did not.

24 c. ques. At what distance from you was that man on the dock when you first saw him; and did you or not hear him speak?

Ans. He was from twelve to fifteen feet; I didn't hear him say anything.

25 c. ques. How many feet was it from the after gangway to the mid-ships?

Ans. About forty feet.

26 c. ques. Do you know of your own knowledge who fastened said
269 propeller to said dock?

Ans. I do not.

27 c. ques. Did you hear the captain or mate speak to any person on the dock while mooring?

Ans. I heard some one on the vessel calling out to some one apparently on the dock; what they said I don't know.

28 c. ques. Is it usual while in port, going up and down the river, to fire up more than one boiler?

Ans. It is usual with us not to fire up under more than one boiler; I don't know what it is on other boats.

By agreement of parties the further examination was adjourned to to-morrow at two o'clock in the afternoon.

J. T. MOULTON, *U. S. Com's'r.*

FRIDAY, *Nov. 20th*, 1857.

Adjourned the examination to to-morrow afternoon at two o'clock.

J. T. MOULTON, *U. S. Com's'r.*

270 SATURDAY, *Nov.* 21, 1857.

Resumed the examination, pursuant to adjournment.

29 c. ques. Have you read over, or heard read over, by any one, the depositions previously taken in this cause? and if so, for what object?

Ans. Only what was taken the day after the burning. The protest, I do not know for what object.

30 c. ques. Have you not seen, or has it not been explained to you, what the witnesses, or some of them, of the libellants in this case have testified to?

Ans. It has not.

31 c. ques. Do you not know what witnesses have been examined on the part of the defendant in this case, and what they have testified to?

Ans. Nothing; only what was in the protest.

32 c. ques. Did not the burning of the propeller throw a light at some distance? if so, how far?

Ans. A short distance, it threw a light; I should think, not over two hundred yards.

271 33 c. ques. Did you stand on the opposite side of the slough from where the propeller lay? and if so, how far was it from where you stood to the dock?

Ans. I did stand on the opposite side of the slough, and it was about twenty or twenty-five feet from the dock.

34 c. ques. Did you see any men then standing on the dock? and if so, what were they doing?

Ans. I see one man standing on the dock, apparently cutting something—as I supposed, the vessel's lines.

35 c. ques. Could you not distinctly see, from where you stood, the dock, and the men on it?

Ans. At times I could see part of the dock, and at times I could see the man, as the smoke would clear away, but I could not see the dock distinctly.

36 c. ques. How long was you on the boat, before leaving, after being aroused?

272 Ans. I should think not over five to ten minutes.

37 c. ques. Did all the crew leave the boat at, or about, the same time?

Ans. Nearly about the same time.

38 c. ques. Was there not a windlass in the fore part of the vessel; and could you not have used it, at the time you left the boat?

Ans. There was a windlass there, but they could not use it, because the smoke was so dense.

39 c. ques. Do you recollect from what point the wind blew that morning; and did it not blow towards the shore?

Ans. I do not know.

40 c. ques. After you went ashore, did you not notice that the smoke blew towards the land?

Ans. I did not.

273 41 c. ques. Did you go, before leaving the vessel, to the forward part of the boat?

Ans. I did not.

42 c. ques. How do you know that the smoke was dense in the forward part of the boat?

Ans. When I got into the small boat, which was forward, I could see the smoke coming out of the anchor-holes on the port side.

43 c. ques. When you was on the boat, was not the fire aft; and could not the crew have worked at the windlass if necessary?

Ans. The fire was aft. I don't know whether they could have worked at the windlass; I wasn't in the place, and couldn't tell. I didn't know how far forward the fire had got.

44 c. ques. How many men were there in all, on board of the propeller; and did they all leave by the small boat? and if so, how many trips did the small boat make?

Ans. I think there was twenty-one in the crew, and she brought them all in one load.

274 45 c. ques. Where was the boat scuttled; and how many holes were bored into her, and where?

Ans. I think she was scuttled side forward by the dock; I do not know how many holes were bored into her.

46 c. ques. How deep was the water where the boat was moored?

Ans. I do not know.

47 c. ques. Could the propeller have been scuttled where she lay?

Ans. She could; she was scuttled where she lay.

48 c. ques. Can you scuttle a vessel when she lays on the bottom? and if so, how?

Ans. You can scuttle a vessel when she lays on the bottom, by boring holes in her.

49 c. ques. Was you present when the boat was scuttled; and do you know anything about it, of your own knowledge?

Ans. I was standing on the bank when she was scuttled; I know

275 nothing about it, only what the men said when they came back.

50 c. ques. Did you not have an auger on board said propeller?

Ans. I do not remember.

51 c. ques. At what time, that night, did the crew retire to bed?

Ans. I do not know.

52 c. ques. What time did you go to bed; and did you leave the crew up?

Ans. About nine o'clock; I left Mr. Daly, the first engineer, and Mr. Dodge, the mate, in the cabin; I don't know anything about the rest of the crew.

53 c. ques. Do you know whether the crew, or any of them, had liquor on board that night?

Ans. I do; the first mate had some in his state-room; none other, that I know of.

54 c. ques. Did any of the crew drink any liquor that night, before
276 going to bed? if so, how many, and whom?

Ans. I do not know.

55 c. ques. Were you acquainted with the habits of the watchman on the propeller that night? if so, whether or not he was intemperate in his habits?

Ans. His habits were rather temperate; he did drink sometimes; I never saw him drunk but once, while he was on the vessel.

56 c. ques. Were your duties such as to bring you often in connexion with the said watchman?

Ans. It was, by being on the same watch—out of port, not in port. Then I kept watch from twelve till morning, in the engine-room, taking care of the engine, and he kept watch all over the vessel, and I used to see him pass.

57 c. ques. Had the flames reached the forward part of the propeller at the time the crew left?

Ans. They had not.

277 *Direct examination resumed.*

39 ques. State whether or not you saw any spirituous liquors drank by any of the officers or crew of the propeller on the evening in question, before you retired to bed.

Ans. I did not.

40 ques. When did you last see the said watchman before you turned in, and what was his condition as to sobriety?

Ans. I see him shortly before I turned in in the cabin; he was perfectly sober.

41 ques. When did you next see said watchman, and what was his condition at that time?

Ans. After the alarm of fire; as I was coming out of my room I passed him, and he appeared to be sober.

42 ques. State whether or not you noticed him while you were in the small boat, and after you had landed from the boat; and if so, what was his appearance at that time?

278 Ans. I did not notice him; nor after we had landed.

43 ques. When was the time that you saw him intoxicated, as you have above stated?

Ans. I do not recollect the time; it was some time during the season on the trip up, at Detroit.

44 ques. State what knowledge you have in regard to fastening the lines of the propeller when you moored her to the wharf.

Ans. I have no knowledge.

45 ques. Do you wish to make any explanation in regard to your answer to the 15th direct interrogatory?

(Obj'd to.)

Ans. I didn't say that the man fastened the lines to the wharf.

46 ques. What did you say, or intend to say, upon that subject

(Obj'd to.)

Ans. I said all that I knew about it.

279 *Re-cross-examined.*

58 c. ques. You say, in your answer to the 40th direct interrogatory, that you saw the said watchman in the cabin just before turning in, and that he was perfectly sober. State whether or not you noticed him particularly with reference to his sobriety; and if so, the reason that you observed him so particularly at that time.

Ans. I did not notice him particularly, any more than I would notice any man by looking him in the face.

59 c. ques. Can you tell by casually looking a man in the face whether or not he had drank once, twice, or not at all?

Ans. I can some men that I know; I mean to say that I can tell a man that I know, that is any way intoxicated, by looking him in the face.

JOHN DORCY.

Subscribed Nov. 21, 1857.

J. T. MOULTON,
U. S. Com'r.

280 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, J. Tilden Moulton, a commissioner, duly appointed by the circuit court of the United States for the northern district of Illinois, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the witness above named is material and necessary in the cause in the caption of the said deposition named, and that he is about to go and reside out of the district, and more than one hundred miles from Chicago, the place where said trial is appointed to take place, and does not expect to return in season to be present

281 at the trial of said cause.

I further certify, that no notification of the time and place of taking the said deposition, signed by me, was made out and served on the adverse party, to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit, for the reason that the adverse party appeared and waived such notice.

I further certify, that on the nineteenth and twenty-first days of November, in the year of our Lord one thousand eight hundred and fifty-seven, I was attended by Mr. Ayres, proctor for libellants, Mr. Hosmer, proctor for the respondents, and by the said witness, who is of sound mind and lawful age; and the said witness was, by me, first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid; and the deposition was, by me, reduced to writing in the presence of the said witness, and from his statements; and after carefully reading the same to the said witness, he subscribed the same in my presence; I have retained the said deposition in my possession for the purpose of passing the same with my own hand to the clerk of the court for which the same was taken.

282 And I do further certify, that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause in the said caption.

In testimony whereof, I have hereunto set my hand and seal, this twenty-

[L. S.] fourth day of November, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the eighty-second year.

J. T. MOULTON,
U. S. Commissioner, duly appointed by the circuit court of the United States for the northern district of Illinois.

Fees, commissioner	15 00
Deponent, 3 days	4 50
	$19 50

Endorsed: Received open from the hand of the commissioner and filed Nov. 24th, 1857.

WM. H. BRADLEY, *Clerk.*

283 Be it remembered, that on the eleventh day of June, anno Domini 1857, at the city of Buffalo, in the northern district of New York, before me, Aurelian Conkling, clerk of the said district, and a commissioner of the United States, personally appeared John Hubbell, esquire, and made oath that he was the attorney of the Western Transportation Company, and that the said company was defendant in a suit depending in the district court of the United States for the northern district of Illinois, in which Oramel S. Hough, Charles J. Kershaw, and Charles H. Seaverns were libellants or plaintiffs; and that the testimony of Tobias Lowe, William Baker, Patrick Welch, Philip Welch, Jacob Gemlin, Nelson Woodworth, Alvin Dodge, Thomas Daly, John Darcy, and Henry Miller, and of each of them, was material and necessary for the said defendants in the said suit; and that he expected the said cause to be tried at Chicago, in the northern district of Illinois; and that the proctor
284 of the said libellants resides at said Chicago; and that the said witnesses, Tobias Lowe, William Baker, Patrick Welch, Philip Welch, and Jacob Gemlin, severally reside at said Buffalo; and that the said witnesses, Nelson Woodworth, Alvin Dodge, Thomas Daly, John Darcy, and Henry Miller, severally reside at Detroit, in the district of Michigan, and that said Buffalo and said Detroit are more than one hundred miles from said Chicago; and the said John Hubbell requested me that the said witnesses might be examined before me according to the directions of the act of Congress in such case made and provided.

Whereupon I ordered that the said witnesses should be examined before me *de bene esse* at my office at the city of Buffalo forthwith, no notice seeming to be requisite; and certain of the said witnesses being produced, I have proceeded with the said examination as follows:

And the said Tobias Lowe having been by me first duly examined,
285 cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

I reside in Buffalo; I am about forty-seven years old; for five or six years I have had charge of a derrick on Buffalo creek for A. D. Bishop. In October, 1856, I was watchman on board the propeller Falcon; the propeller was in the trade from Buffalo to Detroit, and Buffalo to Chicago; I shipped upon the Falcon in the month of May, and I continued on board of her until the time of the fire at Chicago when she burned; she was laid up at Buffalo some four or five weeks in the summer; I was on board the Falcon at the time she was burned at Chicago, on the Chicago river; she had been taking in cargo, and was in part laden at the time of the fire; at the time of the fire the propeller lay at a wharf in front of a packing-house; the fire occurred on the morning of the eighteenth day of October, 1856; she was fastened there on the

286 evening of the seventeenth of October; she had been further up the stream, first at an elevator, and had there taken on some grain, and also at a packing-house where she had taken in some barrels; I was upon the propeller at the time she was fastened at the wharf where the fire occurred; she was moored there in consequence of the thickness of the weather, as I understood it; the weather on the evening of the 17th October was very thick, worse than I had ever seen it; there was a dense fog; it became dark sooner than usual on that evening on account of the fog; at the time the propeller was fastened there was some conversation between some one on board and some one at the wharf, but I did not hear it distinctly; my duty as watchman on board the propeller was to look after fires and the goods and property on board; I was watchman all night; I was on watch on board the propeller on the night of the 17th October, 1856; I took supper aboard the propeller that
287 night, and I think it was soon after we were made fast at the wharf when the fire occurred; I believe all the crew were on board at supper time; the fires on board the propeller were put out when it was determined to remain there; I mean the fire under the boiler; I did not assist in putting out the fires; I saw the coals raked out and water put upon them; the fireman did it; in consequence of the darkness of the night I was more particular than usual that night; one of the firemen and I stood on the deck and looked down into the fire-hold for the purpose of seeing whether there were any live coals to be seen, and we saw none, but saw the water in the hold; the floor was covered (with) with water; my duties commenced immediately after supper that night; Mr. Dodge, the mate, cautioned me to be particularly careful, because the weather was such as not to admit of seeing far on board the boat; the crew went to bed earlier than usual when the boat was in port; there were none of them
288 ashore, and went to bed earlier than they usually did; the crew all went to bed but me; a little after tweve o'clock I went down into the hold for a scuttle of coal into the hold where the fires had been, and then I saw no fire there; I got the coal and took it into the cabin; I noticed the clock in the cabin when I went out of the cabin after taking in the coal; I put a small amount of coal into the stove in the cabin to prevent the fire from going out; along after two o'clock, from 2 to ½ past two, I smelt an odor as if something was burning, and I looked about and below; I saw occasionally a little flash like the flame of a candle below; I was then on the middle deck and forward of the mid-ships; I then rushed down into the hold to get to the light which I saw; I missed my footing on the steps and fell down into the hold; I was stunned, I suppose, and when I recovered the smoke was very thick; I was almost suffocated in the smoke; when I recovered I got out in some way; I was frightened and hurt; I found there was fire very near me, and don't
289 know whether I got out alone or was helped out; I heard the captain on deck as I was getting out calling that the boat was on fire, and getting the men up; I got on deck and saw the men flying about and getting water and trying to get the hose ready.

They got some buckets of water, and threw the water down in; I worked with the rest, but it was soon found that the fire could not be put out, and I heard the engineer speak to the captain about scuttling her and going ashore. When I came upon deck, the fire was coming up fiercely from below, and we had to leave the boat forthwith. When I left the hold I went up on to the middle deck—the second deck. The blaze was then rushing up, and soon after the state-rooms took fire. The crew were all up, I think, when I got out of the hold and came on deck. Before I got out of the hold I heard the captain calling the men up, and singing out that the boat was on fire. I got off
290 from the boat. We were told to get ashore. I attempted to go ashore aft, but she was too much on fire there. We let ourselves slide down one of the large fenders into the yawl-boat, and from the yawl-boat we got on to

the dock near to the bow of the propeller. I did not at this time see a soul on the dock—not a single person. The buildings on the dock were on fire when I got ashore. The fire was then very hot. I went ashore with the crowd. I was hurt and hardly knew which way to go. I was pulled up out of the boat, by some one on the dock. I had not strength to get out myself; I heard the engineer inquire, "for God's sake where is the captain; why does not he come ashore?" When I first saw the flash of light of which I have spoken, I was looking down into the hold for the purpose of seeing where the fire was, and it was after I had discovered the odor which I have mentioned. I slipped on the stairs from the promenade deck, and fell clear into the hold. I slipped on the first stair. I should think the height between decks was about eight
291 feet. I saw the flash of light for but an instant, and then started to go to it.

At this point, the testimony having been read over to witness, he says:

I am represented as saying that I saw "occasional flashes of the light." I went toward the light as soon as I saw it. I saw the light for only an instant. I am not sure about going to the elevator first. We went to some deck above first. It may not have been to the elevator. I went ashore that morning. I said some one helped me out of the yawl-boat. I think I was helped by some one aiding in the boat, by pushing me up. From where I stood I could not tell exactly where the flash of light came from; but I knew it was below. I knew it was in the hold below; I mean that the light was down in the hold by the furnace. There is where I would naturally look for the fire, and there is where I endeavored to go.

And the testimony having been read over to the witness, he thereupon signed his name, the eleventh day of June, 1857.

TOBIAS LOWE.

292 Alvin Dodge, having been first duly examined, cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

I reside at Detroit. I am twenty-six years old. I am a sailor. I shall be engaged in my business during the summer as a sailor. I have been a sailor about eleven years. In October last I was mate of the propeller Falcon, and had been since some time in April of that year.

That propeller was engaged in a trade between Buffalo and Chicago. I was on board the propeller at Chicago at the time she was burned. I think it was the morning of the 18th day of October, in the Chicago river. She lay at a wharf, in front of a packing-house in the Chicago river. I was on board the propeller at the time she was fastened at the wharf. I assisted in fastening her there. She was tied up between six o'clock and seven o'clock of the evening of the 17th day of October. She was tied up on account of the thick
293 weather. The weather was thick and smoky, so that it was nearly or quite impossible to go down the river. It was dangerous to go down, for fear of getting afoul of other vessels, and for fear of getting on to the bank and breaking our wheel. The weather was so thick that one could see but a short distance from where he stood. When we stopped at the wharf, I heard a conversation between the captain and some one on the dock, and I had a conversation also with the same person on the dock. I supposed it to be the same man. The conversation was in regard to mooring the boat. He appeared to be a watchman in charge of the premises. All the conversation was this: I asked him if he would take a line for us. I had the line in my hand. He said in reply: "Have you got some salt for us?" The captain answered, No; that it was so thick he could not get down the river, and he was going to lie there that night. I think that the man, instead of asking in the words above mentioned simply asked, "Have you got salt?" He took the line,

294 and made it fast. I heard no more conversation from the shore. I heaved the line to the man, and he took it and made it fast. We were not then near enough to the wharf to put a plank ashore. There were then one or two of our men in a small boat, and I think, though I don't know the fact, that they took a line ashore from aft. I was then but a short distance from the captain. He was standing on top of the pilot-house, and I was on the promenade deck, a short distance forward of the pilot-house. I heard no objections made by any person ashore to our stopping there, and I think none could have been made without my hearing them. I was on duty at the time. The captain had charge of the propeller. We do not have watches in port, and the captain had charge. After we made fast, the first thing we did was to get supper. It was the engineer's duty to look after the fires. We had supper a little later than the usual hour that night. At supper time every man was aboard, and every officer also. There was the master, the
295 first mate, the second mate, two wheelsmen, the first engineer, the second engineer, three firemen, six deck hands, the watchman Lowe, the cook, and the steward. After supper I sent the men below to try the pumps to see whether there was any water in her. I went down below myself into the well to look around and see whether there was any water in her. I found no water in her, and found everything right. I then came up into the cabin and sat down after seeing that all was right. When I came up out of the hold the captain was turned in. The room occupied by the captain is a room off from the cabin. The second mate and I roomed together. I think I turned in about ten or half past ten. I sat with the engineer until about that time. None of the crew left the boat after supper; all were aboard when I turned in. Before I went into the cabin I told the watchman to be particularly careful. I told him to go down below frequently, and to keep himself busy in watch-
296 fulness. I think that when I turned in all the crew were turned in excepting myself and the engineers. After I turned in, the first I knew was that the captain burst my door open and told me the boat was on fire. The door locked itself from the inside. I jumped out and followed the captain rapidly aft. I saw the smoke coming out of the companion-way that led down from the promenade deck on to the main deck. I went then further aft for the purpose of getting the hose to screw on to the pump. I could not get down to where the hose was because of the smoke and fire. I then ran back and told the men to get all the buckets and get what water they could to put upon the fire. We got all the buckets we could and threw on water, and tried to put the fire out in that way. We threw but few buckets of water before everything was on fire, and we had to run for our lives. I then made a rush for the boat and told all hands to follow me. In going forward I had to pass my room. I had then only my drawers and shirt on, and I tried to get some clothes,
297 and did get some pants, a coat, and pair of boots, and by that time the fire came very near upon me. I then got into the boat; the boat was 20 feet from the wharf forward, and the small boat was between her and the dock. Nearly all of the crew were then in the boat; the captain was behind. I sang out for the captain, and presently he came and got in, and then we made the best of our way ashore through the fog. As soon as we got ashore, and while we were on the boat also, we gave all the alarm we could. The first engineer and myself went down towards town hallooing "fire." We then returned, and when we had got back the second mate and some of the men, by directions of the captain, had attempted to scuttle the boat. Just as we got back the mast fell over into the boat in which the men were. They then sculled the boat ashore. I then soon after got into the boat myself and took the second mate, wheelsman, and some of the hands, and went
298 alongside and bored twelve or thirteen two-inch auger-holes in her below the water. I then took the men and took them around between the

street and the packing-house, and there we all went to work upon a fire-engine, and we worked there until the engine went away.

Hearing adjourned until to-morrow morning at 9'oclock.

FRIDAY MORNING, *June 12th*, 1857.

Same witness continued.

When we moored the propeller at the wharf at which she was burned we came with her from Craigan's packing-house, or Craigan & Co. Craigan's house is half to ¾ of a mile above where she lay when she was burned. At Craigan's we took on some beef, 400 barrels, I think. We had also on board some wheat and some hides and some flour also. When we came down the river we were going down to the elevator of T. W. Alexander & Co. to complete our cargo with wheat. There were also to be another hundred barrels of beef drawn down to us at the dock of the Western Transportation Co.

299 I am not certain but that we were to take more flour on board also. From where she was burned down to Alexander's was a mile or more. From where she was burned down to where the remainder of the beef was to be taken in is about three or three and a half miles. I do not know the exact distance. All sorts of vessels go up and down the stream, the Chicago river, or Chicago creek, as it is called, above and below Hough's packing-house, There are wharves along the stream for the accommodation of vessels. The dock of Hough & Company was directly on the margin of the river. There was a width of a number of feet between the packing-house and the river which was used as a wharf. The wharf was longer than the house. I have been acquainted with the stream ever since I commenced sailing, but I had never before been up the stream as far. I had never before been up further than a point half a mile below the point at which we burned. I recollect a slip a short distance above Hough & Co.'s warehouse or packing-house.

300 I should think it was twenty to thirty rods above. I cannot speak with accuracy in regard to the distance. We tried to wind there. We worked there half to ¾ of an hour and found it impossible to wind there, and then we went on. There was not a sufficient width of deep water to enable us to wind there. We entered the slip partly and as far as we could. There was not water enough in the slip. We just put her bows into the slip. We were going down stream stern foremost. We had gone up head foremost, and there had been no opportunity to turn about. From Hough & Co.'s up the river was crooked and the channel was narrow, with shoals putting out on either side. In front of Hough & Co.'s dock the stream, I think, was pretty straight, but the water was shallow. When we attempted to wind at the slip, which I have mentioned, we had assistance from a tug which was coming down. The people on the tug concluded we could not wind there, and ceased their efforts.

When I was first aroused by the captain the boat was all on fire aft

301 between the decks, so much so that I could not get from the promenade deck down on to the main deck. We remained on board until we were driven off by the fire. I cannot say how long it was. When we left the propeller the fire had reached nearly to the forward part of the cabin. The fire was in my room when I left it. My room was the second room aft from the forward end of the cabin on the larboard side. The stern quarter of the propeller lay against the dock in front of the packing-house. The forward part of the boat was, I should think, twenty feet in front of the dock in front of the packing-house. The yawl-boat lay between our bows and the dock. The fire was in the after part of the boat, and drove us forward into the forward part of the boat. When we got into the small boat we had a view of the dock in front of the packing-house. I did not then see any persons on the dock. I heard no voice and saw no one except of our own crew. I saw some of our

302 crew upon the dock trying to get through the warehouse, and they could not, and returned to the small boat. I saw no one then on the roof of the packing-house. The lower end of the packing-house, abreast of the after part of our boat, was on fire before we got ashore in the small boat. The engineer and I went immediately to give the alarm as soon as we got on shore. Before we returned I saw no one there other than our own crew. After I came back I again got into the small boat. It was probably twenty minutes from the time I got ashore until I again got into the small boat. After we got into the small boat we went along on the outside of the propeller, and we were afraid to remain there. We sculled across the river and remained until the arches fell, and then we returned and bored the holes. I don't think we remained across the river more than five minutes. When we came back across the river the roof of the packing-house seemed to have fallen in and the propeller was burned down to her plank-shear. There was nothing above the plank-
303 shear but the pipe, which stood. I did not, while I was in the boat, hear any call made to me from any one on shore. From the opposite side of the river I could distinguish nothing. I could see only the flames. I think I could have seen objects near to the fire. I should think the river was about a hundred and twenty feet wide there. When we started to go to the further side of the river from the fire we could see the bank, but not plainly. When I first turned out, before I had made any examination, perhaps a line might have been got across the river. When I left the propeller the first time there was no possibility of getting to any line on board for the purpose of hauling her away. When I first turned out it would have been impossible to get to her after lines on board to cast them off. After we first left her there was no possibility of getting near to the after part of the boat to get a line fast until the upper works were all burned off. I saw no attempt from the shore to push the propeller into the stream. I was not acquainted with any one at
304 the packing-house. I saw no one there that I knew other than our own crew. While we were boring the holes I heard noise and shouting ashore. The engines seemed to have come then. From the time I turned out until we commenced boring the holes was, I should think, three-quarters of an hour; it might have been less; I think it was not more. Then the arches had fallen. We waited on the other side till the arches had fallen. I don't know when the wreck was towed across. The first I heard of the engines was when I was boring the holes; and the first I saw of them was when I went around to the other side of the packing-house after the boring of the holes. When we turned in the bows of the propeller were aground, and that is the reason why she was off so far at her bows. I think if we had gone immediately to the forward capstan when we were first aroused, we might have got a line across, and might have heaved upon it a minute or two; but that would not have got the propeller away from the wharf, and would not have prevented the packing-house from getting on fire. After I first left the propeller and went
305 on shore, I did not again go on board. I did go to her side, and it is thus that I speak of "the time I first left the propeller." No one went on board again after we first pushed off in the small boat. At the lower end of the packing-house it was impossible to go around the house, because of an obstruction which came out flush with the face of the wharf. At the upper end of the packing-house there was a sluice-way, more than twenty feet wide, filled with water, which came up close to the upper end of the packing-house. In order to get around to the other side of the house from the stream it was necessary to go with the small boat across this sluice-way and land; and then it was necessary to go some distance inland to get to a street at the end of this sluice-way so as to reach the other side of it.

And the testimony having been read over to the witness, he thereupon signed his name, the twelfth day of June, A. D. 1857.

ALVIN DODGE.

306 William Baker having been by me first duly examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

I live in Buffalo; I am a sailor; I am engaged in sailing this season; I am twenty-four years old; in October, 1856, I was second mate of the propeller Falcon; I had then been second mate of her for three months; I was on board of her at the time she was burned; I know the facts of taking in cargo at Chicago on the 17th October, 1856, and coming down to the wharf at which she was burned, on the evening of the seventeenth; I was on duty when the propeller was fastened at the wharf on that evening; it was in front of Hough & Co.'s packing-house; it was between six and seven that we tied up; the weather was very thick; there was a very thick fog; it was dark earlier than usual; the propeller was tied up because it was not deemed safe to attempt to back down at that time; we were afraid of injuring ourselves and others; at the time
307 we stopped at that wharf, I heard a man on shore say something to the captain; I did not hear the conversation distinctly; some inquiry was made by the man ashore, and the captain answered that he was only going to lie there because of the weather until he could safely go down the river; he said he had nothing to discharge; I heard the first mate ask the man ashore to take a line; I saw the man take the line and make it fast; he made the line fast around a post, on the dock, and they hove on the line; I saw or heard nothing further of or from that man; at supper time every man was aboard, and remained on board during the night until aroused by the fire; the captain turned in early; I went down below with some of the men to see whether there was any water in her; we stayed down there awhile, and we pumped her out, and then I came up and turned in; I think it was about 8 o'clock when I turned in; I was asleep when Dodge came in; he had a key that would unlock the door;
308 I slept until I was aroused by the captain, who came and burst in the door, and said that the boat was on fire; I then ran aft; Dodge endeavored to get at the hose, and I went to get some pails from the hurricane-deck to get some water; we threw some water upon the fire, but we were soon driven forward by the fire; when we were aroused we went aft, and the after part of the boat was all on fire; the flame seemed to come up from below; we were obliged to go forward in order to get ashore, and we let ourselves down into the small boat, and thus went ashore; I saw no one upon the shore when we got ashore other than our crew; the roof of the packing-house was then on fire, and the face of the wharf next to the boat; after I got ashore I went to the packing-house to give an alarm, and found no one there; I then, with some of the men, got into the small boat and went ashore on the other side of the sluice mentioned by the last witness, and went around to the other side of the packing-house and made an alarm there, but I saw no one there; there were four of us
309 went to the packing-house to make an alarm when we first got ashore; after we had been gone some ten minutes we returned, having seen no one; after we had got into the small boat the captain sent and got an auger for the purpose of scuttling her; while we were boring there the mast fell upon us and the boat; we were obliged to go ashore; we had bored two holes when the mast fell; after the mast had fallen, and after we had then gone ashore, Mr. Dodge came and got into the boat; I did not before we first got into the small boat, and I did not while I was going around the house, and I did not while in the small boat, hear any one call to us, and I heard no one make any noise other than the crew until we returned from across the river after the arches had fallen; when we thus returned the boat was burned down to the plank-shear, and there was nothing standing above it but the pipe; the packing-house was all on fire; when we came ashore, after the falling of the mast, a portion of the roof
310 of the packing-house had fallen in; none of the crew went on board after

we went ashore first in the small boat; nothing was saved from the propeller; I did not save my clothes; I heard the testimony of Mr. Dodge in regard to the attempt to wind at a slip up stream from where the fire occurred; he has stated that occurrence correctly; I agree with him throughout in reference to the attempt so made; the bow of the propeller was aground as we lay at the wharf where the fire occurred; I saw no attempt made by any one on shore to push off the propeller; the propeller burned first about at her after gang-way.

And the testimony having been read over to the witness, he thereupon signed his name, the 12th day of June, 1857.

WILLIAM BAKER.

Philip Walsh, having been first duly examined, cautioned, and sworn to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

311 I live in Buffalo; I am a fireman on the lakes; I have been so engaged about five years; I am twenty-five years old; I was on the propeller Falcon during the season of 1856 until she was burned; I was on board at the time of the fire; I recollect her being tied up at Chicago, at the wharf, the evening before she was burned; I was down below when she was tied up; when we came down the river we were heating but one boiler; we had a very slow fire in the two furnaces; we had not had a full fire in the two furnaces that day at all; we had had but one boiler heated at any time after we had discharged the cargo at Chicago; we had completed the discharge of the cargo about two days before; we generally let our fires burn down when we got in; the fire that we had on when we came down the stream was started on the morning of the seventeenth, I think; I cannot say certainly that the fire was put out entirely on the night of the sixteenth, for I did not personally start the fire on the

312 morning of the seventeenth that I recollect; after the boat was fastened I heard the 2d eng neer tell the other fireman to haul out what fires there were, and wet them down; I did not see it done; I was in the engine-room, and it was then the watch of the other man, and it was his business; from the engine-room I could not see into the fire-hold; I was not in the fire-hold after that; I turned in about half past eight or nine o'clock in the fireman's room; the room was at the extreme stern on the main deck; the first thing I heard, after I went to sleep, or experienced, was a smell of smoke which awakened me; when I awakened there was a lamp burning in the room—a globe lamp, and I did not know but that might have caused the smell of smoke; I raised up my head and saw that the lamp was pretty nearly burned out; I then lay down again, and the smoke seemed to increase; I spoke to my brother, and said, "There is a fire somewhere." He said, "What would be on fire?" I opened the door and looked out, and said, "The boat is on fire." I thought to go to the

313 pump, but was prevented by the density of the smoke; my brother went up and aroused the officers and men; the pump was directly aft of the smoke-pipe, on the promenade deck; I then ran back to get my clothes, and I could not get into the room; the men were then all on deck, and then I thought it prudent to make for the dock; in less than five minutes it was not possible to see a man three yards off; it was not more than two or three minutes from the time I got up before the men came out on deck; I followed the fender along and got off on to the wharf at the after part of the boat; I got off a little forward of the after fender; the after fender is some seven or eight feet from the after end of the vessel; I could not see when I got ashore on account of fog and smoke; I got from the dock into the yawl-boat, and then I saw the flames burst out; I went directly toward the bow of the boat as soon as I saw the small boat; I saw the second mate get into the yawl-boat from the propeller just as

314 I was leaping into it from the dock; the other men were then in; I saw

no one on the dock other than our own crew; the men shouted fire; I saw no one about the packing-house or upon the dock other than our own men; at the time I got into the yawl-boat there was a blaze on the boat, and I could not see the packing-house; before I walked along on the fender and got on to the dock, I saw flames on board the boat; I had not then seen any flames except on board the boat; after I left the propeller in the small boat I ran about to the houses to get axes to scuttle the boat, and waking up everybody; after that I came back again, and was in dread of going near to the boat; the progress of the fire was very rapid; the packing-house burned at the same time; I was in the boat when both the second mate and Dodge were in the boat, and when she went across the river; I was on the shore when the mast fell, and I did not see the arches fall; I was in the small boat when the holes were
315 bored under the directions of Mr. Dodge; I was about the place until she burned down to the guards; I cannot tell the time that it took her to burn down to the guards; I did not hear any calls when I was in the small boat from the shore; I did not see any one on shore attempt to push the propeller off from the wharf; I know that no one could go back on to the propeller after they first went ashore.

And the testimony having been read over to the witness, he thereupon signed his name the twelfth day of June, A. D. 1857.

PHILIP WALSH.

Jacob Gemlin, having been first duly examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

I am a German. Last winter I was at Detroit. I came to this country in January, 1849. I am forty-one years old. I am a sailor. In October last I was a deck hand on board the propeller Falcon. I had been on board of
316 her all summer. I knew the place where the propeller tied up the night before she was burned. It was in the Chicago river, near Bridgeport. I was on duty when the boat tied up there. I was in the first mate's watch. It was the first mate's watch when the boat tied up there. I did not hear any conversation with any one on the wharf; and I saw a man on the wharf who took a line and made it fast. I was on the upper deck. I think the mate asked if the propeller could lie there during the night. None of the crew went ashore at that time. I turned in after supper, about eight o'clock. In the morning about three o'clock, or a little after, I heard some one sing out "fire." We all got up; and when I came on deck I saw a good deal of smoke. When I first came out I saw only smoke. I got ashore after a time. We got the hose upon the pump, but we did not work the pump; the smoke and fire drove us ashore. I went ashore when the others did. I could not see much. It was a very dark night. I saw the fire on the wharf and on the vessel; and I
317 went forward and went ashore with the rest of the men. We made a noise. We went ashore, and then went up to the street and there made a noise. When I went ashore, and when I left the boat, I saw only the persons belonging on the boat.

And the testimony having been read over to the witness, he thereupon signed his name the twelfth day of June, A. D. 1857.

JACOB GEMLIN.

Henry Miller, having been first duly examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

I live in Canada East. Am a sailor. I have been a sailor eight or nine years on the St. Lawrence, and on the lakes. Last season I was deck hand on board the propeller Falcon. I was on board at the time of the fire. I had then been on board about three months and a half. I recollect that the night before the fire she was fastened at a wharf in the river at Chicago. I was on board at the time she was tied up. I was in the after watch—the second

318 mate's watch. There was a line taken ashore from the stern of the propeller and fastened to a post on the wharf. I turned in about eight or nine o'clock. In the course of the night I was awakened by the cry of fire. Our room was on the upper deck at the after end of the cabin. The room was about half way from amidships to the stern of the boat. When I got up and went out I saw the first mate upset a cask of water which stood on the promenade deck, and turn the water which it contained down into the hold. By looking down I could see fire, but I could not tell whether it was on the main deck or down in the hold. I ran and got my clothes and jumped from the boat to the dock. I went to the upper end of the dock and there got into a yawl-boat. I saw no one on the wharf when I landed. Not ten minutes after I reached the dock the flames burst out on the propeller. I cannot tell exactly when the fire caught on the sheds. I think the fire did not take on the sheds until after
319 the cabin fell down, but it may have caught before. I got into the same yawl-boat with the rest, and I cannot tell whether or not the sheds were on fire when I got into the boat. I went ashore some distance aft of the midships, within five or six feet of the large after fender. After we got into the yawl-boat we pushed ashore. The bell of the boat was rung before we left the propeller. The bell was sounded, but I don't know how long. After I got upon the dock I shouted and made a noise. I went in the small boat with the first and second mate to bore the holes into the hull. I heard no one calling to those in the boat from the shore while I was in the boat. I saw a man with an axe cutting the line of the propeller which fastened her forward. I cannot tell when this was. I cannot tell the time. At the time I saw the man with the axe the vessel was all on fire. I don't know whether or not the sheds were on fire before the cabin fell down. I cannot tell whether or not the sheds were on fire when I got on to the wharf.

320 And the testimony having been read over to the witness, he thereupon signed his name the twelfth day of June, A. D. 1857.

his
HENRY + MILLER.
mark.

George Davie, having been first duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

I am a sailor on the lake. I have been for five seasons. I am a German. I have been here thirteen years. I understand English well. In 1856, in October, I was a deck hand on board the propeller Falcon, and then had been something more than two months. I was on board at the time she burned. I was in the first mate's watch. I was on duty at the time she was fastened at the wharf where she was burned. I saw a man on the wharf, and the first mate asked him whether he could lie there over night. The man took the line from the mate and put on to a post. I saw no one on *on* the dock beside that
321 man. I heard no conversation with any one else than him. Nothing of any consequence occurred before we went to bed, except that the first mate set us to work about half past nine to try the pumps. In the course of the night I was aroused by the cry of fire. I was in my room in the cabin. The room was forward of the midships. I got up and went on deck. The mate turned over a cask of water by the aid of two other men. I, with two others, put the hose on to the pump, and tried to work it. Soon after that some one said it was no use to try to put out the fire, and that we had better leave the boat. I saw nothing but smoke until after I got on to the dock. I got on to the dock about six or eight feet forward of the after gangway. After that I got into the small boat. After I got on to the dock I saw fire on the boat and on the dock. My overalls were burned on the knees when I struck the dock. I saw no
322 one on the dock more than our own men. I heard the bell of the boat ring. I saw the man Gemlin, who has testified here, ring the bell. After I got

into the small boat we went ashore. I went with another man after an axe. When I first got into the small boat both the propeller and the shed were on fire. I remained on shore when the other men went in the small boat to bore the holes. I heard no calling from any other than our men until the crowd began to collect. In three-quarters of an hour to an hour after I went on shore the propeller burned down to her guards. I saw no attempt made to push off the propeller from the wharf. I was not there when the propeller was towed out into the stream after the burning.

And the testimony having been read over to the witness, he thereupon signed his name the twelfth day of June, A. D. 1857.

his
GEORGE + DAVIE.
mark.

Adjourned until to-morrow morning, at nine o'clock.

323 SATURDAY MORNING, *June 13th*, 1857,
9 o'clock a. m.—continued.

Thomas Daly, having been first duly examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

I reside in Detroit; I am a machinist and engineer; I have been a machinist for nearly eleven years; for the last five years I have been an engineer on the lakes; the last five years, are portion of the eleven. I have been 2d engineer on the Fintry; first engineer on the Princeton and on the Falcon; and now I am 1st engineer on the Mary Stewart; she is a propeller, as the others were; I was not on board the Fintry when she blew up; I had not been on the Fintry that season; at the time of the burning of the Falcon I was on board of her; I had been on board the whole of that season, up to that time—the whole of the season of 1855, and a part of 1854; I was not on board the Falcon when she was tied up, where she was burned; I was on the shore, just be-
324 low the packing-house; I saw her come to the wharf; I came from the city, and was on my way up to meet her; I saw her tie up at the wharf, and went to her; I could not get on to the dock where the propeller lay, on account of a high fence at the end of the packing-house; I then went around on to the street, in front of the packing-house; the packing-house was locked, but was opened by my request, by a man within, who had a lamp lighted in his hand, a globe lamp; he let me through the house, and thus I got on board; there were some men then in the packing-house; I think this was just about six o'clock in the evening; it was dark and foggy; I did not know the propeller from anything I saw; I knew her from the sounds which came from her, from the bells and from the voices; the two bells of the propeller were originally very similar in sound, and I sawed one of them down, and thus gave it a sound which distinguished it; it had a peculiar sound after I sawed it; the watchman, or the man who let me through the packing-
325 house, went with me on to the wharf; he seemed to have charge of the packing-house; he had keys in his hand, and unlocked the door for me; the other two or three men in the house seemed to be about leaving the house; when I got to the propeller, she was made fast; I had no other conversation with the man who let me through than that which I have stated; I remained on board the propeller after that, until I was aroused on account of the fire; I left the propeller about noon, when she was at the elevator, to go and get a wrench made; she was then about going to get in some beef; as soon as I succeeded in getting the wrench, I returned; I had lost a similar wrench that day in fastening one of the buckets to the wheel, to the stern wheel; the wrench was lost in the stream, and I went to get a new one; when I left the propeller, she started up the south branch; the propeller arrived at Chicago, I think, on the fourteenth of the month; she was completely discharged, I think, on

326 the evening of the sixteenth; we generally kept a small amount of steam on when in port, discharging, in order to work a hoisting machine; we generally kept steam on in one boiler; we kept but little fire for the other boiler; after our cargo was discharged, we went to the elevator, and the fire was increased for the purpose of going to the elevator; the fire was increased but little; only a little fire was necessary, and we kept no more than was required; on the evening of the 16th we did not get quite to the elevator; the fog was so great, that we had to stop before reaching the elevator, and in the morning we went to the elevator; on the evening of the sixteenth the fires were extinguished as much as we ever extinguish them; they were burned out; when there was any considerable quantity of fire in the furnace at night, and we were not outside, our practice was to rake out the fire, and wet it down; I cannot say, certainly, whether the fires were wetted down on the night of the sixteenth or not; my habit is to direct that the fires be wet down; I have no particular recollection as to the evening of the 16th. On the morning
327 of the 17th there was a small amount of fire made, much smaller than usual, because the thick weather would not admit of any rapidity of motion; we had not half as much fire as we were accustomed to have outside; when I went aboard at the packing-house, I think I inquired of the second engineer in regard to the fire, but I am not sure that I did; I consider that the boilers and machinery, and fire-hold of the propeller, were in first-rate condition on the 17th day of October, 1856, the day before she was burned; there was a brick floor all over the fire-hold, laid in mortar; there is a 2-inch pipe and cock of equal size, which comes up through the bottom of the boat, between the fire-hold and the engine-room; the cock is accessible from the fire-hold, made so purposely; a two-inch stream of water may be instantly turned on in the fire-hold; the boilers were made with return flues, and we fired from forward; the smoke chimney was aft of the cabin; there were two boilers, and there are two furnaces to each boiler; the smoke from all of the four furnaces (from the two boilers,
328 comes together in one pipe, resting upon an arch above promenade deck) The fires were made at the front end of the boilers, and the smoke returned and escaped also at the front end above the boiler. At each boiler the smoke entered a leg of the arch, and thus was carried to the pipe. I should think the nearest wood to the smoke-pipe was eight to twelve inches distant, and on the main deck. The wood was protected all around by tin and sheet-iron. Around the main deck there was a covering of tin, and there was a sheet-iron jacket which ran from the main deck up through the promenade deck. In the spring of 1856 the propeller was inspected at Buffalo, as to her machinery I know; I don't know as to the hull, and I don't know whether certificates were obtained. There was a free circulation of air within the jacket which I have mentioned. Through the whole length of the boilers the wood came close up to the outside of the boilers, and directly within that there was a thickness of water four to six inches thick.

329 I don't think it was possible, in this case, for the fire to be communicated through that covering of water. The water was at least of the boiling-point when steam was in process of generation. This space is intended to be always filled with water, whether we are making steam or not. Our intention is always to have the boilers covered, and in condition to make steam. In front of the mouths of the furnaces was a wooden bulkhead, twelve or fifteen feet distant. There was a wooden bulkhead alongside of the boilers, on the outside of the two, and this was against the boilers; and on the top above the boilers it ran all the way forward to the cross-bulkhead, and below it ran along the side to a point about three feet forward of the line of the mouths of the furnaces. There was about a foot, perhaps a little more, between the line of this bulkhead and the mouths of the furnaces. Both of the outside furnace doors opened inboard, and away from this bulkhead. The bulkhead which I

have mentioned as being cut off three feet in front of the boilers was
330 cut off to a height of four and a half or five feet. The boilers are eighteen feet long. There is a fire-chamber of about seven feet long under the front of the boilers, and at the rear end of this chamber of seven feet the flues commence and extend to the rear end of the boiler, and then rise and return at the top, but with a thickness of water of at least a foot of water above them. The water surrounds the fire-chamber also. The fire-chamber communicates with the smoke flue, and the water of the boilers surrounds the whole.

The water of the two boilers is not necessarily connected, but it may be connected. I think the Falcon was, in every respect as concerns fire and other things, first-rate, an A No. 1 propeller. I think she was sufficiently protected against fire.

On the night of the 17th October, 1856, I turned in somewhere from nine to ten o'clock. I was awakened, I should think, somewhere about two o'clock by the second engineer, John Dorcy. He told me the boat was on fire. My room was in the after part of the cabin, but the door was on the outside. When he told me, I jumped up and ran out to near the smoke-pipe, and there I
331 found the rest of the crew. They were getting pails, and some were trying to get the hose. I went back and put on my pants and boots. When I got back, the mate and I endeavored to get the hose. The hose was between-decks aft. We found it impossible. I went back and commenced throwing water with buckets. We worked at the fire as long as there was any chance of extinguishing it with the buckets. We found we could not put out the fire, and we started to go ashore. I went to my room and got my coat and some other things, and while I was in the room the second engineer called to me. He was then on the deck. He called to me to come out—that the deck was all on fire under me. The door to my room was on larboard side of the vessel, and the wharf was at that side. He stood just abreast of the room on the wharf, and could have seen me enter the room. When I came out of my room there was a strong body of flame coming out of a window on her side, which was in line transversely with my room. There was also a flame of fire coming out of the after gangway. I then got
332 down on the fender-rail, in part between these two flames, and thence jumped on to the dock. This was not more than five minutes, I should think, from the time I was first awakened. When I jumped upon the dock I saw some of the crew there, but none other. We made a noise on the dock. The bell, the alarm bell, was rung before we left the boat. We got all of us into the small boat. Then the propeller aft, from the after gangway to forward of my room, was in a bright blaze. I did not notice any fire on the house. I did not pay any attention to the house at all. I was on the wharf a minute or two before getting into the boat. The flames were very hot, so that it was uncomfortable there. We pushed away, and landed on the other side of the sluice above the packing-house. We hallooed "fire" loudly. I had, up to that time, seen no one other than our own crew about there. We left the dock when we did because of the heat and danger from the fire; and there was no other way of getting away than by getting into the boat. I think it was not possible for any one to get back on board the propeller. I heard the captain inquire of the mate whether it was not possible to get to the vessel, so
333 as to get her away from the dock. They concluded that it was impossible. When we found that we could not get the boat away, we went up to the houses to arouse the people; the mate and I went together. We hallooed "fire," and knocked at the doors as we came to them. We then went back to the shore, and found that the second mate and some of the crew had attempted to scuttle the vessel. They were just coming from the side of the vessel, one of the men having been hurt by a falling spar. The mate then got into the boat and went for the purpose of scuttling the vessel. I remained

on the beach until he returned. When Mr. Dodge and I returned from giving the alarm, the packing-house was all on fire. I think we were gone fifteen to twenty-five minutes.

When we started to go to give the alarm was probably five minutes after I left the boat. Up to the time we left I heard no one about the packing-house. There seemed to be some one in there when we returned. I think I heard some one in there then. I did not at any time hear any one from the packing-
334 house call to me, or any of the crew, for any purpose. I saw no attempt made to remove the propeller by any one on the wharf. When we started to go and give the alarm the boat was all on fire in her upper works. I did not notice the packing-house. On the night of the fire the weather was very foggy. It was so all the morning of the fire. The identity of a man could not have been determined at a distance of twenty feet. I do not think that at any time after we were aroused the propeller could have been got away from the wharf. The rapidity with which the fire spread would have prevented any operations at the stern of the propeller at the end of ten minutes fom the time we were first aroused. The propeller, on account of the water and the condition of the bank, could not have been moved either forward or aft. She was aground forward and aft. There were obstructions on the wharf. She could have been moved only by taking her square out into the stream. We could not see whether there was anything to fasten to on the other side of the
335 stream, if a line had been carried across. Two of our firemen had been with me nearly three seasons, and I considered all three excellent men. The second engineer was a good careful man, and a good mechanic.

We had a fire-engine pump, and we had a steam-pump attached to the engine, which admitted of being fastened to the pipe which come through her bottom. I don't know the number of fire-buckets; that was not within my sphere. I was at Chicago when the machinery was taken out of the wreck of the Falcon this spring, in March and April, and perhaps early in May. The wreck was not as badly burned at the fire-hold as it was forward and aft.

The pipe that let the water come up through the bottom of the propeller was two and a half or three inches in diameter. From this large pipe there was a connection for the two smaller pipes. I do not mean to confine my statement to the seventeenth of October, when I speak of the good condition of the propeller. I mentioned that date because it was the day before the fire.

And the testimony having been read over to the witness, he thereupon
336 signed his name, the thirteenth day of June, 1857.

THOMAS DALY.

Examination adjourned until Monday morning next, the 15th instant, at nine o'clock a. m.

MONDAY, *June 15th*, 1857.

Examination indefinitely continued.

And I do farther certify, that the foregoing testimony was taken as above stated, and was reduced to writing by me, and was read over to the said witnesses severally, and was signed by them respectively, and that I am not attorney or proctor, counsel, nor advocate, for either of the parties to the said suit.

In witness of all of which, I have hereunto signed my name and
[SEAL.] affixed the seal of the said northern district of New York, the twenty-second day of September, anno Domini 1857.

AURELIAN CONKLING,
Clerk of the Northern District of New York,
and Commissioner of the United States therein.

337 And I do further certify, that the foregoing depositions have been constantly retained in my possession since the taking thereof until this twelfth day of December, 1857, when they are deposited in the post office at Buffalo, directed to the clerk of the northern district of Illinois.

AURELIAN CONKLING, *Com'r, &c.*

Endorsed: Filed Dec. 16th, '57.

WM. H. BRADLEY, *Clerk.*

Endorsed: Opened for Judge Scates, Feb'y 5th, 1858.

WM. H. BRADLEY, *Clerk.*

Be it remembered, that on the eleventh day of June, anno Domini 1857, at the city of Buffalo, in the northern district of New York, before me, Aurelian Conkling, clerk of the district, and a commissioner of the United States therein, personally appeared John Hubbell, esquire, and made oath that he was the attorney of the Western Transportation Company, and that the said
338 company was defendant in a suit depending in the district court of the United States for the northern district of Illinois, in which Oramel S. Hough, Charles J. Kershaw and Charles H. Seaverns, were libellants, or plaintiffs; and that the testimony of Patrick Walsh was material and necessary for the defendants in the said suit; and that he expected the said cause to be tried at Chicago, in the northern district of Illinois; and that the proctor of the said libellants resides at said Chicago, and that said witness resided at the city of Buffalo, in the State of New York, and that said Buffalo is more than one hundred miles from said Chicago; and the said Hubbell requested of me that the said witness might be examined before me, according to the provisions of the act of Congress in such case made and provided.

Whereupon I ordered that the said witness should be examined before me *de bene esse*, at my office at the city of Buffalo, no notice seeming to be requisite.

And now, on this eleventh of December, anno Domini 1857, the
339 said witness having been produced before me, and the said John Hubbell being present, I have proceeded with the said examination.

And the said Patrick Walsh, having been duly examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

I am about twenty-four years old. In the summer I sail on the lakes, and in the winter I live at Buffalo. I have for the last five years been a fireman on steamers on the lakes.

I was on board the propeller Falcon, as fireman, during the seasons of 1854, 1855, and 1856; I was on board of her at the time she was burned.

I was fireman. There were three firemen, and we served three hours on and six off, each alternately.

We had been at Chicago two or three days before the fire occurred.

I was on board the propeller on the night of the burning, and I was on board, also, the night before. I think I was not off from the propeller during the day before the burning.

During the day preceding the burning we had fire in but one of the
340 furnaces, and that was the furnace on the starboard side. When we got into the river we let the fire go out in one of the furnaces, and we kept a fire in the other furnace, just sufficient to work a pony engine for hoisting. The first night, when we got into Chicago, we let the fires go entirely out in both furnaces. We went up the river to take in cargo, and then we had fire in but one furnace. When we started to come back from the packing-house, at about five o'clock in the evening, we put in about four or five shovel's full of coal into each door of the starboard furnace. We backed down, because there was

not room to wind. I was on duty firing when the boat tied up near the warehouse of Hough and Company. I think we stopped at the wharf of Hough and Company about six o'clock, or a little after. I was either in the engine-room, or near there, when we tied up. I turned in that night about nine o'clock.
341 When we were made fast at the wharf, the second engineer, John Dorcey, told me to go down and haul out the fires; this was before supper. I went down with one of the other firemen, or he came down soon after, and found but very little fire. When I got into the fire-room I hauled out the fire out of both doors, and I got it all out; I then wet it down as much as possible. There was a cock between the two boilers, and from that I drew water in a bucket; I drew the bucket full more than ten times, and I poured the water on to the burning coal. I continued to put water on as long as there were any live coals. I turned the coals over, after wetting one side, and then wet down the other side. I turned the coals over with a shovel. The other man, Patrick McGrath, aided me in putting on water at the first. He left the fire-room before I did. When I left the fire-room, I had the fire thoroughly wet down. The floor,
342 which was of brick, was pretty nearly covered with water. My brother Philip was the other fireman, but he had not been on duty as fireman that afternoon. My brother and I had a room together, aft on the main deck, on the starboard side. My brother and I went to our room at the same time. Some time after midnight, probably about three o'clock in the morning, my brother awakened me, and said he could not sleep on account of the smoke. I got up and opened the door, and I found a dense smoke there, so thick that I had difficulty in finding the stairway. I was choked by the smoke; I told him to turn out—that the vessel was on fire. I went up stairs and awakened the deck hands; I found no one up when I went up stairs. I went to the wheelsman and awoke him; I went to Captain Woodworth and told him that the vessel was on fire. I came aft again from the captain's room, and then saw the vessel was on fire; I saw flames of fire. When I had got back about
343 amidships, I saw the flames. The flames were right abreast of the smoke-pipe, and on the deck which formed the floor of the upper cabin—the deck above the main deck. The stairway down to the main deck was within about eight feet of the rudder-post, and when I got there, intending to go back to our room for my trunk, I found the smoke so thick that I could not get down; I went down a few steps and returned. I did go down on to a fender outside, and got into our room through a window, and my brother passed me down a line, and hauled up my trunk through the window. I then got out of the window again, and got upon the wharf. This all occurred in fifteen or twenty minutes; it was some fifteen or twenty minutes from the time I was first awakened until I got on to the wharf; I saw no one on the wharf, but I saw some of the crew in the yawl-boat, and saw my brother getting in. Before I got there, they had the boat several yards off, and they came back for
344 me. Before I got upon the wharf the first time, and while there, I did not hear any shouting or hallooing. As soon as we got ashore in the yawl-boat on the other side of the sluice-way, Captain Woodworth told every man to run about the city and halloo "fire!" He told us to endeavor to get axes, and a two-inch auger, to scuttle the vessel. We did as he bade us. I think it was about a quarter of a mile to the first house I came to, and the people were then getting out of their houses. We all hallooed and gave the alarm. The first persons I saw, other than the boat's crew, were at that house. When I got first upon the wharf, fire was falling down about my head, and I cannot say whether the embers fell from the shed or the boat; I think both were on fire then. I and the man with me obtained an inch-auger, and came back to the boat. I went into the yawl-boat with one of the wheelsmen, and with one or two of the deck hands, and we went to the vessel on her starboard side,
345 and about ten feet aft from her stern, and just below the surface of the

When water, we bored two holes through her side with the inch auger. we had the two holes bored, the mast fell into the small boat, carrying with it a portion of the railing, and injuring the wheelsman. We were compelled to leave, and we returned ashore. Soon after, we met the fire-engines coming from the city, and we returned with the engines and aided in working the engines.

And the testimony having been read over to the witness, he thereupon signed his name the eleventh day of November, A. D. 1857.

The witness having a sore thumb on his right hand, made his mark.

his
PATRICK + WALSH.
mark.

And I do further certify, that the foregoing testimony was taken as above stated, and was reduced to writing by me, and was read over to the said witness, and was signed by him; and that I am not attorney or counsel, proctor,
346 or advocate for either of the parties to the said suit.

In witness of all of which, I have hereunto signed my name, and
[L. S.] affixed the seal of the said northern district of New York, the eleventh day of December, anno Domini 1857.

AURELIAN CONKLING,
Clerk of the Northern District of New York,
and Commissioner of the United States therein.

I further certify, that, since the taking of the deposition, it has constantly remained in my possession until deposited in the post office at Buffalo, directed to the clerk of the northern district of Illinois.

AURELIAN CONKLING,
Clerk of the Northern District of New York, and Commissioner.

Endorsed: Filed Dec. 16th, 1857.

WM. H. BRADLEY, *Clerk.*

Opened for Judge Scates, Feb'y 5th, 1858.

WM. H. BRADLEY, *Clerk.*

347 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

On this fourth day of March, in the year of our Lord one thousand eight hundred and fifty-eight, before me, George W. Baldwin, a commissioner duly appointed by the circuit court of the United States for the northern district of Illinois, under and by virtue of the act of Congress "for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, personally appeared at my office, in the city of Chicago, in the said northern district of Illinois, Nelson Woodworth, a witness on the part of the claimants in a certain civil cause of admiralty and maritime jurisdiction now depending and undetermined in the district court of the United States for the northern district of Illinois, wherein O. S. Hough, Charles J. Kershaw, and Charles H. Seaverns are libellants, and the Western Transportation Company are claimants.

348 *Nelson Woodworth.*

And the said Nelson Woodworth having been by me first duly cautioned and sworn to testify the whole truth, did thereupon depose and say:

My name is Nelson Woodworth; I am forty-one years old; I reside in Detroit; I am a ship-master and mariner. In the month of October, A. D. 1856, I was sailing the propeller Falcon as master. I left Cragin's dock on the 17th of Oc-

tober last, about 4 o'clock p. m., and commenced backing the Falcon down stream, stern foremost. I backed down to a slip, within about the eighth of a mile of Hough & Co.'s packing-house, where I tried to wind the Falcon, that she might go head first down the stream. After about half an hour's work, I found there wasn't water enough to wind her, so I let her drop back, and commenced to back her again down stream. At this time the weather began to be very foggy and smoky, so that you couldn't see more than the length of the vessel. I backed her down once or twice her length below Hough & Co.'s
349 dock, when the weather became so thick that I thought it unsafe to back her any further down the river, stern first. I said to my mate, "Get your lines ready on the port side, and we'll go alongside this dock and make her fast for the night." As we ran up alongside of Hough & Co.'s dock, I saw a man standing there, and hailed him, and asked him if he would take my lines. He said "Let them come," and took them and made them fast. After he had made them fast, he asked me, as I understood him, if I had any salt for Hough & Co. "Have you any salt for us?" was his question. I said "No, we have not;" we want to lay here to-night. I then said to my mate, after the vessel was made fast, let all hands get supper. After supper I gave the usual order to my mate to look after the vessel for the night. I was more particular about water, and shortly afterwards I went to bed. Between two and three o'clock next morning, (the 18th of October, 1856,) one of my firemen, named Patrick
350 Welch, came to my room in great haste, and said, Captain, the vessel is all on fire. I left my room instantly in my drawers and shirt in which I was sleeping, called my mate, breaking in his door, and told him to spring out of bed. I then passed along to the rooms of the first and second engineer, and pushed in their doors to awaken them, calling out to them, as a man would in a desperate hurry, to get up. I still continued going aft. I got to the after end of the cabin, on the promenade deck, within about eight or ten feet of the smoke-pipe. There I met a dense volume of smoke coming from the main deck through a hatch in the promenade deck. At this time it was so dark and dismal with smoke, that it was unsafe for a man to travel without feeling his way, unless well acquainted with the ground he was travelling on. I made a general survey of things, and gave the usual order to get the hose ready, and, if possible, to get the pumps at work. All but one length of my hose was on the main deck
351 where they belonged, and were in the midst of the fire, so that we could not get at them.

During the time they were trying to get them, the fire broke out near the smoke-pipe, so that we could not get near the fire-engine. We threw what water there was in our casks on the upper deck. At this time I passed along forward again, and found the fire coming out of the whole three port gangways off from the main deck. I saw the vessel was sure to go; at least such was my conviction. I started and went aft again, and found the fire rushing out of the after gangway, and the dock abreast of the gangway was on fire for some eight or ten feet. I then told my mate to order the men to take care of themselves and go ashore; that it was all up with the vessel. Perhaps I gave them the order myself. I then ran to my own to dress myself, having had nothing on up to this time but my drawers and shirt. I put on my boots, pants, overcoat, and cap, and stepped right across the cabin to my office in order to save my books, papers, and what money I had with me. At this time it had got to be
352 very hot; the flames were coming into the after part of the dining-room. While in the office, I heard the mate and some of the men cry out, "Where is the captain?" and urging me for God's sake to come ashore. I would say here, that at the very first notice I had of the fire, I gave immediate orders for the bell to be rung, and for the men to raise the cry of fire, which was done. When I came from my office to leave the vessel, after having done everything that I could do, in my present belief, two-thirds of the vessel I

should think, from end to end, was on fire, and the dock likewise. By "dock" I mean the wharf, with the shed upon it. I went to the forward part of the boat on the bows where our small boat was lying and slid down the fender into it, after first throwing in my books and papers. I think it must have been from fifteen or twenty minutes, from the amount of work done, from the time the alarm was first given till I left the vessel. Up to this time no man belonging to the warehouse had shown himself, although we were ringing the
353 bell and shouting fire till within five minutes of my leaving the vessel. There were some dozen men in the little boat with me. We shoved it from alongside the propeller to Hough & Co.'s dock, and took in two or three of the crew who had jumped ashore from the stern of the vessel forward of the after gangway. Up to this time no one had shown himself on the dock. We then shoved across the slip. I sent two of my men in search of an axe or an auger, or something that we could scuttle the propeller with, and sent others of my officers to alarm the neighbors, or those in the packing-house, of the fire. At this time it was so dark that it was impossible to discern an object for two feet through the combined smoke and fog. My men not being acquainted with the locality, had to crawl on their hands and knees and feel their way to the street. I did so myself as I went out, and so did those with me most of the way. It might have been five or ten minutes from the time I left the corner of the dock to cross the slip and leave the vessel, when I heard a man shouting in the direction of the upper end of Hough & Co.'s dock. I walked
354 down as near the water as I could, I suppose within twenty or thirty feet of the corner of the dock, and by the light of the fire I saw a man come down to the corner; I could just see his form dimly. He seemed to have an axe; and tried to cut the head line of the propeller. I don't think I should have seen him had I not heard his voice and known that a man was there. Very shortly after this, within one or two minutes, one of my men came with a two inch auger that he had found. I sent one of my mates, or both of them, with the small boat to go under the bows of the propeller and scuttle her. While they were boring the holes the foremast fell over, part of it into the boat they were in, carrying with it the promenade deck rails and other portions of her upper deck. Several men were badly hurt. They then came ashore, the wounded men taken out, and the boat sent back with a fresh crew. The rail, bulwarks, and arches were just ready to fall, and we were obliged to leave her after boring between eight and twelve two-inch auger-holes into her. I then told my mate to go around and get in the packing-house yard with the
355 men, and do all he could to save the property, and I then started for town. By this time it must have been from 4½ to 5 o'clock, I should think The propeller lay directly against the wharf, at her after end. Her forward gangway was nearly abreast of the upper end of the dock, and the vessel lay about twenty-five feet in the stream from the upper corner of the dock. Her head lay betwen fifty and sixty feet above the upper corner of the wharf. She lay aground forward on a bar. Her length was 191-foot keel, about 200 feet on the promenade deck. The distance from the smoke-pipe to the upper corner of the wharf was about 100 feet, and to the stern of the vessel about 45 feet. I first saw the fire through the scuttle in the promenade deck, about four feet from the smoke-pipe. The wind blew the flames directly across the vessel upon the shed and packing-house. The wind was about west. There was a shed between the wharf and the packing-house. From the time I was aroused till I got to the dock in the small boat, the boat appeared to be in flames from end to end. When I got into the small boat, the wharf and shed were
356 on fire, as far as I could see. The fire extended along the shed and wharf to within forty or fifty feet of the upper end of the dock. It was so very dark and foggy, that I cannot pretend to accuracy in estimating distance. At the time I shoved up to the dock, I know that the dock was on fire at the

after gangway, which is within twenty-five or thirty feet of the stern of the boat. At that time a man could not pass from the upper to the lower end of the dock. From the time I was first aroused, till I saw the man through the fog come up with an axe and cut the vessel's lines, it must have been thirty minutes. From where we stood on the west side of the slew, we could not see what was going on on the dock. I was not on the dock at all during the fire. I saw no one upon it except the man who cut the lines. I saw no one on the dock at any time before I left the vessel. We had as cargo on the propeller 400 barrels of beef, and between 5,000 and 6,000 bushels of wheat, and one or two hundred barrels of flour, also 200 or 300 green hides, and I think some dry hides. I am not certain how much water the Falcon drew; I should think 8½ or 9
357 feet aft. We had one capstan forward and one aft on the promenade deck. The fire when I first discovered it was close round the after capstan. At the time I first went on deck the men could not have labored at the after capstan. At the time I came on deck the men could not have worked at the forward capstan, if there had been anything there to do. I think the dock was on fire when I came on deck, but I am not positive. We could not have sent a boat across the channel with a line and made it fast so that we could heave upon it with the after capstan, in less than half an hour. If a line had been sent across and fastened, the men I had with me could not, with the capstan in the then condition of the propeller, have hove off the bow of the vessel from the bar. The wind had been during the day about north-northwest. It canted to west during the evening, and this has a tendency to lower the water in the river. On the night in question the water must have lowered eight or ten inches, and this left the propeller hard aground at the bow. The wharf
358 extends from the edge of the water into the river over thirteen feet. I am not certain whether the shed extended the length of the dock or not; as far as I could see the night of the fire it did. I think the shed was attached to the packing-house. The packing-house must have been back from the dock line between thirty and forty feet. The "usual orders" referred to by me in the early part of my examination are simply these: I should say to the mate, see that the water is all out of the vessel; tell the watchman what hour to call you, and see that the vessel is well made fast. It is the duty of the engineer to see that the fires are put out at night and cared for. There was a watch kept on board the propeller. He took charge of the vessel when the mate left her, and his duty was to see that everything went right. He remained on duty from supper-time till the mate was called in the morning. The watchman employed that night had been with me all summer. I considered that he had been a faithful man to his employers, and had done his duty well, or I shouldn't have kept him. I saw him about the time he went on duty that night. He
359 took supper at my table about seven o'clock, when I saw him, and he immediately went on watch. At that time I think he was strictly sober. I did not see him again till the second or third day thereafter. I saw no vessel near me at any time while I lay at the wharf. I have detailed all the conversation that occurred between myself and the man who helped me to fasten the vessel to the dock the night before the fire. He may have said, in addition, that he was expecting salt for the packing-house, but nothing more.

Cross-exam'n.

Being cross-examined on the part of the libellants, the said witness further deposed as follows:

When we first came to Hough's wharf I was on the pilot-house forward; the pilot-house was not more than 30, or at most 40 feet, from the extreme forward end of the vessel; from the pilot-house to the wharf might have been about forty feet—that is, from where I was to where the man stood on the wharf; this was about

360 dusk; I could see perhaps the length of my vessel; I didn't know the man on the wharf, to whom I spoke; I could see him indistinctly; he made no objection in any way to my making fast there; I have been past the place often before Hough's wharf was built; but I only judge the distance of the wharf from the river margin from its present appearance; the wharf did not obstruct the navigation of the stream for any purposes; when I first saw the fire I was on the promenade deck; my room was in the extreme forward end of the cabin; the man who notified me of the fire, Welch, occupied a room in the extreme after end of the vessel on the main deck, directly over the fantails; this man, and the other two firemen, were the only ones who slept on the main deck; there was a companion-way right abreast of his door leading to the promenade deck, so that he could escape by it, although the main deck might be on fire; he would have no other escape; when I came there the main deck was on fire; after I saw
361 that the vessel could not be saved, it would have been impossible to fasten a rope to her stern and pull her away from the wharf, because the vessel was all on fire aft at this time; I don't think a line could have been made fast to any part of the after part of the vessel; by getting into a boat we might, after the vessel had burned enough to lighten her, have fastened a rope to her stern near the water, if there was anything to make fast to; I think there was not, and that it couldn't have been done; if it had been possible to fasten a line to her after part, she was so hard aground at the bow that I don't think, without the aid of a capstan, we could have moved her stern at all by pulling on the rope from the opposite side of the river; there were no places above where we could have lain safely without the same danger to others; I think there was a dock below where I could have lain; I think there was not a dock in the vicinity where there was no house or lumber upon it; we could not safely have anchored in the stream, nor could we have laid her up where there was
362 no dock; it is very unsafe; the vessel is liable to spring her butts; we generally moored, while unloading in Chicago, at the Western Transportation Company's dock; and while picking up a load, wherever night overtook us, and we saw fit to lay; the after gangway of the propeller, when I first saw the fire, was about three feet or two feet eight inches from the wharf, and at the time the flames were coming out of the after gangway; I couldn't say whether the wharf was on fire then or not; my attention was specially directed to the vessel; my impression is that it was on fire, there was such a mass of smoke coming from the gangway; I stood about nine or ten feet from the dock; there could not, at the time I first came on deck, have been any persons on the wharf trying to push off the vessel without my seeing them; I could see at that time only a very short distance, nine or ten feet, perhaps more; if parties had been at the stern of the boat at the time pushing at it, I could not have seen them, but think I should have heard them.

363 *Direct exam'n.*

A chart, marked "Exhibit A," and filed with this deposition, was here exhibited to the said witness, who thereupon testified thereto as follows:

The chart shown me, and marked "Exhibit A," is a correct representation of the relative positions of the propeller, dock, slew, and packing-house at the time of the fire, except that the stern of the vessel ought to be close against the dock.

Cross-exam'n resumed.

The cross-examination being then resumed by the libellants' proctor, the witness thereupon testified as follows:

The watchman, who acted as such on the night of the fire, had been with me five months, and I had never known him to be intoxicated; the wharf of the Western Transportation Co. must be two miles below Hough's packing-house;

the wharf where I took in my loading that evening (Craig's) must have been about half a mile above Hough's; when I left Craig's I did not intend to put out in the lake for Buffalo; I hadn't finished my loading; we didn't ex-
364 pect to get out of the river that night when we left Craig's wharf; it was quite clear when I left Craigin's wharf; we could see, I should think, an eighth of a mile, but toward night the dense fog gathered round us all at once; at the place where we attempted to wind there was no dock, and no place where the vessel could be tied up safely, as I thought; indeed, I didn't think of tying up there, because I wanted to go further down the river.

NELSON WOODWORTH.

Sworn and subscribed before me, this 4th day of March, A. D. 1858.

G. W. BALDWIN, *U. S. Com'r.*

(Here follows map marked Exhibit A, p. 365.)

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

365 I, George W. Baldwin, a commissioner, duly appointed by the circuit court of the United States for the northern district of Illinois, under and by virtue of the act "for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, do hereby certify, that the reason for taking the foregoing deposition is that the testimony of the witness aforesaid is necessary in the cause in the caption of the said deposition named; that the said witness resides out of the said northern district of Illinois, and more than one hundred miles from the place of trial of said cause, and is about to return home and remove out of said district; that the proctors for the libellants were duly notified of the time and place of taking said deposition, and consented to the same, and attended the examination.

That on the fourth day of March, in the year of our Lord one thousand
366 eight hundred and fifty-eight, I was attended by the proctors for the libellants and for the claimants respectively, and by the said witness; that the said witness was by me carefully examined and cautioned, and sworn to testify the truth; and the testimony by him given was by me reduced to writing, and thereafter subscribed by the said witness in my presence; and t I am not of counsel or attorney to either of the parties, nor in any way interested in the event of the cause named in the said caption.

Witness my hand and official seal, this fourth day of March, A. D. 1858.

[SEAL.] G. W. BALDWIN,

U. S. Com'r for the Nort'n Dis't of Ill's.

Endorsed: Received open, from hand of commissioners, and filed March 11th, 1858.

WM. H. BRADLEY, *Clerk.*

367 The following papers and plat were introduced in evidence by the libellants upon the hearing of this cause, to wit:

Illinois and Michigan canal:

Know all men by these presents, that the board of trustees of the Illinois and Michigan canal, under the authority vested in said board by the act of the legislature of the State of Illinois, of February 21, 1843, entitled "An act to provide for the completion of the Illinois and Michigan canal, and for the payment of the canal debt," has sold to Roswell M. Hough and Oramel S. Hough the following described lots of land, to wit: lot four (4) and five (5) in block one, (1,) in the said trustees' subdivision of fractional section twenty-nine, (29,) in township thirty-nine (39) north, of range fourteen (14) east, of the third principal meridian; said lots being a portion of the land granted by the United States by the act of March 21, 1827, and the 29th August, 1842, to the State of Illi-

nois, to aid said State in opening a canal to connect the waters of the Illi-
368 nois river with those of Lake Michigan, and by said State granted to the said board of trustees of the Illinois and Michigan canal, for the purpose set forth in the said act of said State, of Feb. 21, 1843.

Know ye, also, that the said Roswell M. Hough and Oramel S. Hough paid to the treasurer of the said board of trustees the sum of twenty-two hundred and seventy (2,270) dollars and cents, being in full payment of the purchase money for said land, and made according to the conditions set forth in the act of January 9, 1836, entitled "An act for the construction of the Illinois and Michigan canal."

In consideration thereof, and the premises, the said board of trustees of the Illinois and Michigan canal has granted, bargained, and sold, and by these presents does grant, bargain, and sell unto the said Roswell M. Hough and Oramel S. Hough the said lots of land above designated and described: to have and to hold the same, together with all the rights, privileges, immunities, appurtenances thereunto belonging, unto the said Roswell M. Hough and
369 Oramel S. Hough, their heirs and assigns, forever.

In witness whereof, the said board of trustees of the Illinois and Michigan canal caused the corporate seal of said board to be affixed hereunto, and
[SEAL.] the names of the president and the secretary of said board to be hereunto subscribed, this eighth day of May, in the year of our Lord eighteen hundred and fifty-five.

W. H. SMITH, *President.*

WM. GORDON, *Secretary.*

Endorsed: State of Illinois, Cook county, ss. No. 50,259. Filed for record May 14, '55, and recorded in book 2 of deeds, "Canal," page 109.

L. D. HOARD, *Clerk.*

370 *Warranty deed.*

This indenture, made this fifteenth day of January, in the year of our Lord one thousand eight hundred and fifty-six, between Roswell M. Hough and Anne Jennette, his wife, of the city of Chicago, county of Cook and State of Illinois, of the first part, and Charles J. Kershaw, of the same place, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of thirty thousand dollars to them in hand paid by the said party of the second part, (the receipt whereof is hereby acknowledged,) and the said party of the second part forever released and discharged therefrom, have granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, alien, and confirm unto the said party of the second part, and to his heirs and assigns forever, all the following described lots, pieces, or parcels of land situate in the county of Cook and State of Illinois, and known and described as follows, to wit: All that undivided one-
371 half part of lot 6, six in block numbered one (1) in the canal trustees' subdivision of the south half of section twenty-nine (29) in township thirty-nine (39) north, range (14) fourteen east, commencing at the intersection of the south side of Water street and the west side of Line street; thence southerly along said west side of Line street, making the interior angle equal to sixty-two degrees and fifty-one minutes distance, ninety-two and seventy hundredths (92.70) links; thence westerly, parallel to Water street, five hundred and ninety-eight and sixty hundredths (598 60;) thence northerly along said west side of said lot, six (6) links, to the west side of said lot six (6,) making the interior angle eighty (80) degrees distance, eighty-three and seventy-six hundredths (83.76) links, to the south side of Water street; thence easterly along the south side of Water street, making the interior angle equal to one hundred degrees (100) distance, six hundred and twenty-six and

thirty hundredths (626.30) links, to the place of beginning, containing one-half ($\frac{1}{2}$) of an acre. And also all the undivided one-half ($\frac{1}{2}$) of the follow-
372 ing described lots of land, to wit: Lots four (4) and five (5) in block one (1) in the subdivision of the board of trustees of the Illinois and Michigan canal, of fractional section twenty-nine (29,) in township thirty-nine (39) north, of range fourteen (14) east, of the third principal meridian. And also all the undivided one-fourth ($\frac{1}{4}$) part of the following described lot, situated in the county of Cook and State of Illinois, being all that certain portion of the west half of the northwest quarter of section number thirty-two (32) in township number thirty-nine (39) north, of range number (14) east, of the third principal meridian, being east of the south branch of the Chicago river, viz: being the north three acres of that certain parcel of said ground lying directly south of an east and west line running parallel with the north boundary of said section, four chains and ninety-seven links (4.97,) intending hereby to convey one-fourth ($\frac{1}{4}$) of the north three acres of all that parcel of land set off in a partition suit to a certain Michael Bonfield, at the February term of the
373 Cook county court of common pleas, A. D. 1852, wherein the said Michael Bonfield and James O'Brien and Patrick O'Brien, reference being hereby had to the records of said Cook county court of common pleas, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim or demand whatsoever of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances: to have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said Roswell M. Hough, party of the first part, for himself, his heirs, executors and administrators, doth covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery
374 of these presents he is well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law, in fee simple, and has good right, full power, and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind or nature soever: and the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

In witness whereof, the said parties of the first part hereunto set their hands and seals the day and year first above written.

ROSWELL M. HOUGH. [SEAL.]
ANN JENETT HOUGH. [SEAL.]

Signed, sealed, and delivered in presence of—the words thence northerly along southwest side of said lot six (6) interlined between the 31st and 32d line before execution and delivery—
A. HUNTINGTON.

375 STATE OF ILLINOIS,
Cook County, city of Chicago, ss:

I, Alonzo Huntington, a notary public within and for the said city, in the said county, in the State aforesaid, do hereby certify that Roswell M. Hough and Anne Jannett P. (his wife,) who are personally known to me as the real persons whose names are subscribed to the above deed, appeared before me this day, in

person, and acknowledged that they executed and delivered the said deed, as their free and voluntary act, for the uses and purposes therein set forth. And the said Anne Jenett P., wife of the said Rosell M. Hough, having been by me examined separate and apart and out of the hearing of her said husband, and the contents and meaning of the said deed having been by me made known to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

376 [L.S.] Given under my hand and notarial seal this 26th day of February, in the year of our Lord one thousand eight hundred and fifty-six.

ALONZO HUNTINGTON,
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

I, William L. Church, clerk of the circuit court and ex-officio recorder in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of a certain instrument filed in my office on the 26th day of February, A. D. 1856, and recorded in book No. 104 of deeds, on page 502, the parties to the same being R. M. Hough and wife, of the first part, and Charles J. Kershaw of the second part.

[SEAL.] In testimony whereof, I have hereunto set my hand and affixed the seal of our said court at Chicago this 11th day of March, A. D. 1858.

WM. L. CHURCH,
Clerk of the Circuit Court and ex-officio Recorder of Cook County.

(Endorsed:)

STATE OF ILLINOIS,
Cook County.

No. 67842. This instrument was filed for record on the 26th day of February, A. D. 1856, and duly recorded in book 104 of deeds, at page 502.

_____ _____,
Clerk of Circuit Court and ex-officio Recorder.

377 Rec'd from G. S. Hubbard, ag't Ætna Ins. Co., five thousand dollars in full for loss under this policy by fire, Oct. 18, 1856.

HOUGH & KERSHAW.

CHICAGO, *Nov. 15th*, '56.

Ætna Insurance Company.—No. 6110.

By this policy of insurance the Ætna Insurance Company, in consideration of sixty-two $\frac{25}{100}$ dollars to them paid by the assured hereinafter named, the receipt whereof is hereby acknowledged, do insure Hough & Kershaw against loss or damage by fire to the amount of five thousand dollars, $5,000, on their stone packing-house, situated on the south branch Chicago river.

Permission given to make farther ins'ce without notice until required by this Co.

And the said company do hereby promise and agree to make good unto the said assured, their executors, administrators, and assigns, all such immediate loss or damage, not exceeding in amount the sum insured, as shall happen by fire to the property, as above specified, from the 19th day of April, one thousand eight hundred and fifty-six, (at 12 o'clock at noon,) unto the nineteenth day of April, one thousand eight hundred and fifty-seven, (at 12 o'clock at noon,) the said loss or damage to be estimated according to the true and actual cash value of the property at the time the same shall happen; and to

378 be paid within sixty days after notice and proof thereof made by the assured, in conformity to the conditions annexed to this policy: Provided always, and it is hereby declared, that this company shall not be liable to make good any loss or damage by fire which may happen or take place by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power, or any loss by theft at or after a fire: And provided further, that in case the assured shall have already any other insurance against loss by fire on the property hereby insured, and not notified to this company, and mentioned in or endorsed upon this policy, then this insurance shall be void and of no effect. And if the said assured or their assigns shall hereafter make any other insurance on the same property, and shall not with all reasonable diligence give notice thereof to this company, and have the same endorsed on this instrument, or otherwise acknowledged by them in writing, this policy shall cease and be of no further effect. And in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this
379 policy, the assured shall not, in case of loss or damage, be entitled to demand or recover of this company any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said property.

And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above-mentioned premises shall at any time after the making, and during the continuance, of this insurance, be appropriated, applied, or used to or for the purpose of carrying on or exercising therein any trade, business, or vocation denominated hazardous, extra hazardous, or included in the memorandum of special rates, in the conditions annexed to this policy, or for the purpose of storing or vending therein any of the articles, goods, or merchandise in the conditions aforesaid denominated hazardous, extra hazardous, or included in the memorandum of special rates, unless herein otherwise specially provided for, or hereafter agreed by this company in writing,
380 and added to or endorsed upon this policy; then, and from thenceforth, so long as the same shall be so appropriated, applied, or used, these shall cease and be of no force or effect. And it is moreover declared that this insurance is not intended to apply to or cover any books of account, written securities, deeds, or other evidences of title to lands, nor to bonds, bills, notes, or other evidences of debt, nor to money or bullion; and that this policy is made and accepted in reference to the conditions hereto annexed, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto, in all cases not herein otherwise specially provided for. This p licy shall not be valid until countersigned by the duly authorized agent of said Ætna Insurance Co. at Chicago.

In witness whereof, the Ætna Insurance Company have caused these presents to be signed by their president, and attested by their secretary, in the city of Hartford and State of Connecticut.

E. G. RIPLEY, *President.*

THO. A. ALEXANDER, *Secretary.*

381 Countersigned at Chicago this 19th day April, A. D. 1856.
G. S. HUBBARD, *Agent.*

Endorsed: The Ætna Insurance Company hereby consent that the interest of Hough & Kershaw in the within policy be assigned to R. M. Hough, subject, nevertheless, to all the conditions therein contained.

April 19th, 1856.

G. S. HUBBARD, *Agent.*
Pr. HUBBARD & HUNT.

Endorsed: Expires 19th April, 1857. No. 6110. Hough & Kershaw.

$5,000.	Premium	$62 50
	Policy	1 00
		$63 50

Received from G. S. Hubbard, agt. of Ætna Ins Co., five thousand dollars in full for loss on this policy, by fire, Oct. 18th, 1856.

Chicago, Nov. 15th, '56. HOUGH & CO.

382 Ætna Insurance Company.—No. 6111.

By this policy of insurance, the Ætna Insurance Company, in consideration of sixty-two and 25–100 dollars, to them paid by the assured hereinafter named, the receipt whereof is hereby acknowledged, do insure Hough & Co. against loss or damage by fire to the amount of five thousand dollars, $5,000, on their stock of salt, barrels and tierces, contained in the stone packing-house occupied by the assured, and situated on the south branch Chicago river.

Permission given to make further insurance without notice to this Co. until required.

And the said company do hereby promise and agree to make good unto the said assured, their heirs, executors, administrators, and assigns, all such immediate loss or damage, not exceeding in amount the sum insured, as shall happen by fire, to the property, as above specified, from the 19th day of April, one thousand eight hundred and fifty-six, (at 12 o'clock at noon,) unto the nine-
teenth day of April, one thousand eight and fifty-seven, (at 12 o'clock
383 at noon,) the said loss or damage to be estimated according to the true and actual cash value of the property at the time the same shall happen, and to be paid within sixty days after notice and proof thereof, made by the assured, in conformity to the conditions annexed to this policy: Provided always, and it is hereby declared, that this company shall not be liable to make good any loss or damage by fire which may happen or take place by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power, or any loss by theft at or after a fire: And provided further, that in case the assured shall have already any other insurance against loss by fire on the property hereby insured, and not notified to this company and mentioned in or endorsed upon this policy, then this insurance shall be void and of no effect. And if the said assured or their assigns shall hereafter make any other insurance on the same property, and shall not, with all reasonable diligence, give notice thereof to this company, and have the
384 same indorsed on this instrument, or otherwise acknowledged by them in writing, this policy shall cease and be of no further effect. And in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the assured shall not, in case of loss or damage, be entitled to demand or recover of this company any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said property.

And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above-mentioned premises shall at any time after the making, or during the continuance of, this insurance, be appropriated, applied or used to or for the purpose of carrying on or exercising therein any trade, business or vocation denominated hazardous, extra-hazardous, or included in the memorandum of special rates, in the conditions annexed to this policy, or for the purpose of storing or vending therein any of the articles, goods, or
385 merchandise, in the conditions aforesaid denominated hazardous, extra hazardous, or included in the memorandum of special rates, unless herein otherwise specially provided for, or hereafter agreed by this company in writing,

and added to or endorsed upon this policy, then and from thenceforth, so long as the same shall be so appropriated, applied, or used, these shall cease and be of no force or effect. And it is moreover declared, that this insurance is not intended to apply to or cover any books of account, written securities, deeds or other evidences of title to lands, nor to bonds, bills, notes, or other evidences of debt, nor to money or bullion; and that this policy is made and accepted in reference to the conditions hereto annexed, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto, in all cases not herein otherwise especially provided for.

This policy shall not be valid until countersigned by the duly authorized agent of said Ætna Insurance Co. at Chicago.

386 In witness whereof, the Ætna Insurance Company have caused these presents to be signed by their president and attested by their secretary, in the city of Hartford and State of Connecticut.

E. G. RIPLEY, *President.*

THO. A. ALEXANDER, *Secretary.*

Countersigned at Chicago this 19th day of April, A. D. 1856.
G. S. HUBBARD, *Agent.*

Endorsed: Expires 19th April, 1857. No. 6111. Hough & Co.

$5,000.—Premium	$62 50
Policy	1 —
	63 50

(Here follows map and plat of canal and trustees' subdivision, p. 387.

And afterwards, to wit, on the twenty-seventh day of November, in
387 the year of our Lord one thousand eight hundred and fifty-eight, in the October adjourned term, A. D. 1858, of said court, the following further proceedings were had in said court, in said entitled cause, and entered of record, to wit:

ORAMEL S. HOUGH, CHARLES J. KERSHAW, and CHARLES H. SEAVERNS, *vs.* THE WESTERN TRANSPORTATION COMPANY. } Libel.

The court having fully considered, and being now fully advised upon the pleadings and proofs heretofore submitted in this cause, pronounces for the respondent.

It is thereupon ordered, adjudged, and decreed by the court, that this libel be dismissed at the cost of the libellants, and that the respondent have and recover of the libellants its costs by it about its defence in this behalf expended, to be taxed, and that it have execution against the libellants and their
388 stipulators thereon.

And the libellants, by their proctors, pray an appeal to the circuit court.

And afterwards, to wit, on the eleventh day of December, in the year of our Lord one thousand eight hundred and fifty-eight, came Oramel S. Hough, Charles J. Kershaw, and Charles H. Seaverns, appellants, by Messrs. Arrington & Peabody, their proctors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois their appeal and stipulation, which said appeal and stipulation are in the words and figures following, to wit:

CIRCUIT COURT OF THE UNITED STATES, *Northern District of Illinois:*

ORAMEL S. HOUGH, CHARLES J. KERSHAW, and CHARLES H. SEAVERNS,
vs.
THE WESTERN TRANSPORTATION COMPANY.

To the honorable the circuit court of the United States for the northern district of Illinois, in the seventh circuit:

389 The appeal of the above-named appellants respectfully showeth that on or about the thirteenth day of November, A. D. 1856, the above-named libellants, Oramel S. Hough, Charles J. Kershaw and Charles H. Seaverns, exhibited their libel in the district court of the United States for the northern district of Illinois, against the appellee, the said Western Transportation Company, each claiming over fifty dollars, praying, among other things, for the reasons set forth in said libel, that the said appellees, the Western Transportation Company, might be condemned to pay the demands of the said libellants, and costs in said libel mentioned, which libel was afterwards amended.

That process issued out of said court having been served on said appellee, the said Western Transportation Company, it did, on or about the ——— day of ———, A. D. 185–, file its answer to the said libel in the said district
390 court, praying that said libel be dismissed with its costs in that behalf, as by reference to said libel and said answer may more fully appear.

That the said cause came on to be heard before the honorable Thomas Drummond, judge of the said district court, on or about the 30th day of March, the 31st day of March, and the 1st, 2d, and 3d days of April, A. D. 1858, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties; and the said judge having advised thereon, on the 29th day of December, A. D. 1858, made a decree or sentence in said cause, whereby it was sentenced and decreed that the said libel be dismissed at costs of the libellants, and that the respondent, the said Western Transportation Company, have and recover of the libellants its costs by it about its defence in this behalf expended to be taxed, and that it have execution against the libellants and their stipulators therefor.

391 And these appellants are advised and insist that said decrees are erroneous, inasmuch as the said libellants were entitled to recover their damages and costs from the said Western Transportation Company, in accordance with the allegations and prayers of the said libel.

And these appellants, for these and other reasons, appeal from the whole of the said decree against these appellants, and in favor of said Western Transportation Company, to the next circuit court to be held in the said district, and on the said appeal they intend only to have the said cause heard anew on the same pleadings and the same proofs.

And they pray that the said decree and every part thereof may be reversed with cost, or such other decrees thereupon made as to the said circuit court shall seem just; and that the said appellees be condemned to pay to these appellants their costs and damages in the premises, and that the records and proceedings may be returned to the said circuit court.

ARRINGTON & PEABODY, *Proctors.*

392 Francis B. Peabody, being duly sworn, deposes and says that on the 8th day of December, 1858, he gave in hand, left at the office, and with a person acting as clerk, of the firm of Hooper & Causin, proctors for the respondent, a true copy of the above appeal.

FRANCIS B. PEABODY.

Sworn to this 11th day of December, 1858, before me.

WM. H. BRADLEY, *Clerk.*

Endorsed: Filed Dec. 11th, 1858. WM. H. BRADLEY, *Clerk.*

Circuit court of the United States for the northern district of Illinois.—In admiralty.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas an appeal has been taken to this court from the district court of the United States in the northern district of Illinois, in a certain cause wherein Oramel S. Hough, Charles J. Kershaw and Charles H. Seaverns
393 were libellants, against the Western Transportation Company, by the said Oramel S. Hough, Charles J. Kershaw and Charles H. Seaverns, libellants aforesaid, and the said appellants have been ordered to give security by the stipulation of themselves and competent sureties in the sum of five hundred dollars, for the payment of all damages and costs on the appeal in this court and in the Supreme Court:

Now, therefore, the stipulators undersigned hereby stipulate in the said sum of five hundred dollars, to pay all damages and costs on the appeal in this court and in the Supreme Court, in case such appeal shall intervene.

O. S. HOUGH.
C. J. KERSHAW.
C. H. SEAVERNS.
R. M. HOUGH.
WM. B. LOUNSBURY.

Taken and acknowledged this eleventh day of December, A. D. 1858, before me.

WM. H. BRADLEY, *Clerk.*

394 NORTHERN DISTRICT OF ILLINOIS, *ss:*

Rosel M. Hough, Wales B. Lounsbury, being severally duly sworn, each for himself deposes and says that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

R. M. HOUGH.
W. B. LOUNSBURY.

Sworn to this 11th day of December, A. D. 1858, before me.

WM. H. BRADLEY, *Clerk.*

Endorsed: Filed Dec. 11th, '58.

WM. H. BRADLEY, *Clerk.*

And afterwards, to wit, on the seventeenth day of December, in the year last aforesaid, the following stipulation of the parties, by their proctors, to amend the appeal herein, was filed in the office of the clerk of said court, to wit:

395 UNITED STATES OF AMERICA, *Northern Dist. of Illinois, ss:*

In the circuit court of the United States for the northern district of Illinois.—In admiralty.

ORAMEL S. HOUGH *et als.*, appellants,
vs.
THE WESTERN TRANSPORTATION COMPANY, appellees.

It is stipulated by the parties to the above cause that the appeal filed by said appellants may be so amended as to recite that the decree of dismissal was made on the 29th day of November, 1858, instead of the 29th day of December, 1858, as it now stands.

HOOPER & CAUSIN,
Proctors for Respondents.
ARRINGTON & PEABODY,
Proctors for Appellants.

Endorsed: Filed Dec. 17, 1858. WM. H. BRADLEY, *Clerk.*

396 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the above and foregoing to be a full, true, and complete transcript of the record and proceedings had in the case wherein Oramel S. Hough *et al.* were plaintiff, and the Western Transportation Company, defendants, as the same appear of record in said court and remaining on file therein.

[SEAL.] In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office in the city of Chicago, this 17th day of January, A. D. 1859, and of our independence the 83d year.

WM. H. BRADLEY, *Clerk.*

Endorsed: Filed January 19th, 1859.

WM. H. BRADLEY, *Clerk.*

397 And afterwards, to wit, on the 16th day of June, A. D. 1863, in the record of the proceedings of said court in said cause is the following entry, to wit:

ORAMEL S. HOUGH *et al.*
v.
WESTERN TRANSPORTATION COMPANY. } Appeal.

Now comes the respondent, and, on motion, Messrs. Bates and Towslee are substituted as proctors in place of E. K. Hooper, esq.

And afterwards, to wit, on the 8th day of July, A. D. 1863, in the record of the proceedings of said court in said cause is the following entry, to wit:

ORAMEL S. HOUGH *et al.*
v.
WESTERN TRANSPORTATION COMPANY. } Appeal.

Now come the parties, by their proctors; and thereupon this cause coming on to be heard, and after hearing the cause and the arguments of advocates,
398 the court takes said cause under advisement.

And afterwards, to wit, on the 20th day of July, A. D. 1863, in the record of the proceedings of said court in said cause is the following entry, to wit:

ORAMEL S. HOUGH, CHARLES J. KERSHAW, and CHARLES H. SEVERNS,
v.
THE WESTERN TRANSPORTATION COMPANY. } Appeal.

Now come the parties, by their respective proctors; and the court after having fully considered, and being fully advised upon the matters submitted herein, it is considered by the court that the decree of the district court be affirmed, and that the libel be dismissed for want of jurisdiction, at the costs of the libellants, and that the respondents have and recover of the libellants, and R. M. Hough and W. B. Loundsbury, their stipulators, their costs by them in this behalf expended, amounting to the sum of dollars and cents, and
399 that execution issue therefor; and thereupon the libellants pray an appeal to the Supreme Court of the United States.

And afterwards, to wit, on the 24th day of July, A. D. 1863, the said libellants, by their proctor, filed their appeal, appeal bond, citation, and proof of service thereof, all which read in the words and figures following, to wit:

Appeal.

ORAMEL S. HOUGH, CHARLES J. KERSHAW, and CHARLES H. SEAVERNS, appellants,
v.
THE WESTERN TRANSPORTATION COMPANY, appellee.
} Appeal in admiralty.

To the honorable the Supreme Court of the United States:

The appeal of Oramel S. Hough, Charles J. Kershaw, and Charles H. Seaverns, the above-named appellants, respectfully showeth, that on the thirteenth day of November, A. D. 1856, they the said appellants filed
400 their libel in the district court of the United States for the northern district of Illinois, against the Western Transportation Company, in a cause of damage, civil and maritime, for the recovery of damages alleged to have been sustained by them as set forth in said libel, and that the said defendant, the Western Transportation Company, afterwards filed its answer to such libel, and the said libellants replied thereto, and such proceedings were had in the said cause, that on the twenty-seventh day of November, A. D. 1858, a final decree was made and pronounced therein by the said district court, wherein it was, in substance, adjudged that the said libel be dismissed, and that the said libellants pay all the costs incurred in the said cause; and that after such final decree, your petitioners, the said appellants, duly appealed therefrom to the circuit court of the United States for the northern district of Illinois, and the said cause was removed thereby into the said circuit court, and there tried anew, and such proceedings were had in the said circuit court, that afterwards, on the twentieth day of July, A. D. 1863, the said circuit court made a
401 final decree in the said cause, whereby it was decreed that the said decree of the district court be in all things affirmed, and that the said libel be dismissed for want of jurisdiction, and that the said libellants pay all costs which said decree of the said circuit court is, as these appellants are advised, erroneous and ought to be reversed; wherefore these appellants appeal from the whole of said decree of the said circuit court to the Supreme Court of the United States, and respectfully pray that the said decree of the said circuit court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, and every part thereof, may be reversed, and a decree made in accordance with the prayer of the said libel, or such other decree as to the said Supreme Court shall seem just.

ORAMEL S. HOUGH.
CHARLES J. KERSHAW,
By his Proctors.
CHARLES H. SEAVERNS.

402 Dated at Chicago this 23d day of July, A. D. 1863.

ARRINGTON & DENT,
Proctors for Libellants.
A. W. ARRINGTON, *Advocate.*

Endorsed: Filed July 24, 1863.

WM. H. BRADLEY, *Cl'k.*

Appeal bond.

Circuit court of the United States, northern district of Illinois.

ORAMEL S. HOUGH, CHARLES J. KERSHAW, and CHARLES H. SEAVERNS, appellants,
v.
THE WESTERN TRANSPORTATION COMPANY, appellee.

Know all men by these presents that we, Oramel S. Hough, Charles J. Kershaw, Charles H. Seaverns, Roselle M. Hough, and George Steel, all of the city of Chicago, are held and firmly bound unto the above-named transportation company, in the sum of five hundred dollars, to be paid to the said
403 appellee; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twenty-third day of July, in the year of our Lord one thousand eight hundred and sixty-three. Whereas the above-named appellants have prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the circuit court of the United States for the northern district of Illinois:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ORAMEL S. HOUGH. [SEAL.]
CHARLES H. SEAVERNS. [SEAL.]
ROSELLE M. HOUGH. [SEAL.]
GEO. STEELE. [SEAL.]

404 Sealed and delivered, and taken and acknowledged, this 23d day of July, A. D. 1863.

PHILIP ASBOYNE, *U. S. Commissioner, North. Dist., Ill.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Rosell M. Hough and George Steel, being duly sworn, depose and say, each for himself, that he is worth the sum of one thousand dollars over and above all his just debts and liabilites.

ROSELL M. HOUGH.
GEO. STEELE.

Sworn to this 23d day of July, A. D. 1863, before me.

PHILIP ASBOYNE, *U. S. Com., N. D. Ill.*

{U. S. Rev. Stamp.}

The above bond, so far as the sureties are concerned, is entirely satisfactory, and the penalty thereof admitted to be sufficient.

BATES & TOWSLEE. *Proctors for Appellee.*

Chicago, July 23, 1863.

Endorsed: Approved.

THOMAS DRUMMOND.

Filed July 24, 1863.

WM. H. BRADLEY, *Cl'k.*

405 *Citation.*

By the honorable Thomas Drummond, one of the judges of the circuit court of the United States for the northern district of Illinois.

To the Western Transportation Company:

Whereas Oramel S. Hough, Charles J. Kershaw, and Charles H. Seaverns have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the northern district of Illinois, made in favor of you, the said Western Transporation Company, and against the said appellants, dismissing their libel for want of jurisdiction, and the said appellants have filed the security required by law, you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Chicago, in the northern dis-
406 trict of Illinois, the 24th day of July, A. D. 1863, and of the independence of the United States the eighty-eighth.

THOMAS DRUMMOND.

Due and legal service accepted July 24th, 1863.

BATES & TOWSLEE. *Proctors for Appellees.*

Endorsed: Filed July 24, 1863.

WM. H. BRADLEY, *Cl'k.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Thomas Dent, being duly sworn, saith that he served on the appellee, the Western Transportation Company, on the 24th day of July, A. D. 1863, a copy of the appeal, and a copy of the citation filed in this cause, of Oramel S. Hough, Charles J. Kershaw, and Charles H. Seaverns, against the said Western Transportation Company, with the clerk of the circuit court of the United States for the northern district of Illinois, on said 24th day of July, by delivering said copy of the citation to John W. Tuttle, agent of the Western Transportation, personally, and by leaving said copy of the appeal, for said appellee, in the clerk's office of the circuit court aforesaid, the president
407 and other officers of said company being non-residents of said district and not found therein.

THOMAS DENT.

Sworn to this 24th day of July, A. D. 1863, before me.

WM. H. BRADLEY, *Cl'k.*

{ U. S. Rev. Stamp. }

Endorsed: Filed July 24, 1863. WM. H. BRADLEY, *Cl'k.*

408 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true transcript of the record and all the proceedings had in the cause wherein Oramel S. Hough *et al.* were libellants, and the Western Transportation Company respondent, as the same appears from the records of said court now remaining on file in said court and in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of court, at office in Chicago, in said district, this 30th day of November, A. D. 1863, and of our independence the 88th year.

WILLIAM H. BRADLEY, *Clerk.*

Filed December 9, 1863.

Supreme Court of the United States.

No. 100.

ORAMEL S. HOUGH, CHARLES J. KERSHAW, and CHARLES H. SEVERNS, - - - - - - - Appellants,

vs.

THE WESTERN TRANSPORTATION COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

A. W. ARRINGTON, for Appellants.

Beach & Barnard. 14 S. Clark Street.

Supreme Court of the United States.

ORAMEL S. HOUGH, CHARLES J. KERSHAW, and CHARLES H. SEVERNS, - - - - - - - Appellants.

vs.

THE WESTERN TRANSPORTATION COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF AND POINTS FOR THE APPELLANTS.

On the 17th of October, 1856, the appellants were the owners and occupants of a private wharf, and two large packing-houses connected therewith, situated immediately on the bank of the Chicago river, and within the city of Chicago; there being at the same time, personal property of the said appellants to the amount of some hundred thousand dollars, lying on the wharf ready for shipment, or stored in the packing-houses.

On the evening of the day before mentioned, the propeller *Falcon*, a vessel of more than twenty tons burthen, owned by the appellee, and employed by it in transporting merchandise and passengers between the ports of Chicago and Buffalo, and between other ports and places on the lakes in different States, anchored for the night beside the wharf of the appellants, and was fastened thereto, against their will, and contrary to their express prohibition announced to the master of the propeller by an agent in charge of the premises.

During the night, through the carelessness of the officers and crew on board thereof, the propeller took fire, and communicated the same to the wharf and packing-houses of the appellants, which were totally consumed, together with most of the personal property there stored, by which the appellants suffered damage to the extent of more than a hundred thousand dollars.

Printed Record, pp. 2 and 3.

In the District Court, the libel was dismissed for alleged want of jurisdiction, though, by mistake in the entry, the record does not show the fact.

Printed Record, p. 118.

In the Circuit Court, the only point argued or considered was the question of jurisdiction, and a decree was rendered expressly dismissing the libel for want of jurisdiction.

Printed Record, p. 121.

Under these circumstances, according to the rule announced by this Court in *McDonald* v. *Smalley et al.*, 1 Peters, p. 621, since the case in the Circuit Court was decided upon the question of jurisdiction alone, the arguments of counsel must be confined exclusively to that.

Hence, the only point which will be discussed in the present brief is, that relating to the question of jurisdiction. And, indeed, that is the only point in the case concerning which even the semblance of a doubt is possible.

The facts for the determination of the question of jurisdiction are the following:

A vessel, trading between the ports of different States, and in all respects, falling within the definition prescribed by the act of Congress as the test of jurisdiction on the lakes, was moored at a private wharf in the harbor of Chicago, against the will of the wharf owner, and in defiance of the earnest remonstrances made by his agent. From

the negligence of the master and crew of this vessel, she took fire during the night, and communicated the flames to the wharf, and to a large packing-house connected therewith; by which, property to the amount of a hundred thousand dollars was destroyed.

The question is, has a court of admiralty jurisdiction to decree compensation for the damage? And I take the affirmative.

It must be remarked at the outset, that the question is one *primae impressionis*. The case is the first of its particular kind. We can adduce no precedent identical in its circumstances.

We can, however, offer two good and sufficient reasons why this is so:

1. Until a period very recent the admiralty jurisdiction was artificially repressed and hindered from attaining its appropriate natural extension by the jealous and tyrannical interference of the common law courts, in England, and by the servile adoption of the English rule, without comment or qualification, in America.

That rule excluded the jurisdiction, not only from all waters unaffected by the ebb and flow of the tide, but even from tide-waters within the body of a country:

2 Parsons on Maritime Law, p. 497.

Hence, during the prevalence of such a rule, it is obvious that no case like the present could arise; because, ships could not be the means of setting fire to wharves or houses, without penetrating the body of some country, and then, *ipso facto*, admiralty jurisdiction would be excluded by the English rule.

2. The local distance betwixt the sites of houses and the possible anchorage of vessels, in most parts of the world, prevents, *ex necessitate*, the existence of an occurrence like the one in controversy. It is only at Constanti-

nople, in the Golden Horn; in the harbor of Chicago; and in a few other exceptional localities, that "ships may rest "their prows against the houses, while their sterns are "floating in the water":

2 Gibbon's Rome, p. 90.

And hence, again, occurrences such as the present must always be exceedingly rare. Indeed, they have been so rare in the past, that I have been unable, hitherto, to find a single one recorded.

But the objection that this case is the first of its kind, must be pronounced wholly invalid, in the light of recent and leading decisions of the highest national court. For the same objection was urged with all the weight which the most profound learning and powerful eloquence could give it, against those very adjudications which have now become polar stars in the firmament of admiralty law, and was urged in vain; while, at the same time, those adjudications overruled the supreme authority of prior cases, and cases seemingly established among the most permanent doctrines of Federal jurisprudence.

Thus, in the case of the *Thomas Jefferson*, 10 Wheaton, p. 428, in 1825, the Supreme Court of the United States held that the admiralty jurisdiction was strictly confined "to the sea, or waters within the ebb and flow of "the tide."

In *Peyroux* v. *Howard*, 7 Peters, 324, the same court approved the doctrine of the former case, deciding that if one *terminus* of a voyage was above the flow of tide-water, the mere fact precluded the exercise of jurisdiction.

And the law of these cases was followed by all the district and circuit courts. The firmness of an enduring principle, the immobility of a crystalline formation, seemed to have been obtained. In truth, the structure wanted but one thing to insure its permanence, namely: rational ac-

cordance with the spirit of the age and nation, as developed by the physical environments of American geography.

In 1848, in *Waring* v. *Clarke*, 5 Howard, p. 441, the Supreme Court took its first step in a path divergent from the *via trita* of the ancient English rule, by adjudging that admiralty had jurisdiction in a case of collision, though happening *infra corpus comitatus*. This was a great point gained—the germination of a new idea.

But the grand triumph of reason was reserved for the year 1851, when, in the case of the *Genesee Chief* v. *Fitzhugh*, 12 Howard, p. 443, the same august tribunal shook off the yoke of English authority forever, by deciding that "tide-water" constituted no proper test of admiralty jurisdiction. And that case has been succeeded by a series of luminous judgments, which, taken together, establish the true criterion of jurisdiction as being "navigable water" *per se*, in contradistinction to water not navigable, and to nothing else.

Now, it is plain that the case of the *Genesee Chief* was the first of its kind. There had been nothing like it, either in England or America, since the days of Lord Coke. It was not only a novelty; but one in clear contradiction of all previous authority.

It is submitted, therefore, that the objection of novelty has been overruled, in advance, by the highest judicatory of the land.

I will not consume time in exposing the absurdity of the English rule; but will dismiss it, with the remark that its origin was entirely consistent with the facts of its subsequent history. Its birth was due to the meanest of all vices—avarice. In former times, the Judges of common law depended for their means of support upon the fees paid by suitors. Hence, every case in admiralty was so

much substracted from their salaries; and, of course, every writ of prohibition brought a pound or more to their own pockets:

2 Parsons on Maritime Law, p. 497.

Thus, the practical operation of the English rule did not belie the famous maxim of Livy—"*Fœdum inceptu, fœdum exitu.*"

It must be carefully noted, *in limine*, that the present case, although new in the instance, is not all new in the principle. On the contrary, the inference we seek to deduce is, the irresistible logical result of doctrines as old as the common law; and is confirmed, besides, by the cogent analogy of numerous adjudged cases. This conclusion we shall now proceed to demonstrate.

First. Our primary argument is derived from the legal nature and generic characteristics of the two things concerned in the case of damage—the object injured, and the agent causing the injury.

I. The object, or part of the object, injured—the wharf—was unquestionably a maritime thing. A wharf is the necessary *terminus, a quo* and *ad quem*, of every voyage, in certain lines of trade; and becomes thus indispensible to commerce and navigation. It is an instrument of navigation. And it has been expressly decided that the lien of a wharfinger appertains to the jurisdiction of the admiralty:

Ex parte Lewis, 2 Gallis, p. 483;
The Phœbe, Ware's Rep., p. 360;
Johnson v. *The McDonough*, Gilpin's Rep., p. 101;
Ives v. *The Buckeye State*, 1 Newber, p. 69;
Russell v. *The Asa R. Swift*, *id.* 553.

It has even been adjudged that the owner of a ship-yard, who employs a railway cradle and other fixtures for hauling vessels out of the water, can sue in the admiralty for his services, though the repairing may be done by other parties:

2 Parsons on Maritime Law, p. 639.

II. It is needless to prove that the agent producing the damage—the vessel which communicated fire to the wharf—was a maritime thing. That fact is conceded.

Hence, since both the object and the agent were strictly maritime things, and within the admiralty jurisdiction, would not it be shocking to common sense to exclude from that jurisdiction the injury received by one from the other, in a case of manifest and admitted tort?

III. The locality was maritime. The ship, the maritime agent, in the very act of committing the injury, was moored in a maritime place, namely: in "navigable water." And the Supreme Court of the nation has directly determined that "navigable water" is the test of admiralty jurisdiction, in cases of tort:

Jackson v. *Steamboat Magnolia*, 20 Howard, pp. 301, 302.

Therefore, I think we are entitled to say that no admiralty lawyer, in America, will dispute the jurisdiction, as to the damage done to the wharf.

IV. I now invoke another legal principle which, in connection with the preceding, covers the entire case.

The proposition is this: That the incident, or that which is accessary, always follows, or is drawn to, the principal thing in a given combination of circumstances. Or, as the maxim is announced by Lord Coke, "*accessorium non "ducit sed sequitur suum principale*":

Coke on Littleton, 152, *a*.

The civil law has it: "*res accessoria sequitur rem principalem*":

Broom's Maxims, p. 368.

The maxim has been applied to the admiralty jurisdiction in countless cases, and always to this effect: "That "when the principal cause is within the jurisdiction, there "is also jurisdiction over the incidents":

1 Kent's Comm., p. 378;
Com. Dig. Admiralty, F. 6;
Radley v. *Egglesfield*, 2 Saunder's Rep., p. 259, *e*;
1 Ventris, pp. 173, 174, 308;
2 Lev., p. 25;
Cr. Elizabeth, p. 685;
Comb, pp. 462, 463;
6 Viner's Abridgment, p. 516.

All these are common law cases, running, back, too, to the very cradle of the system; and they all concur to establish the point ruled, at a later period, in *Le Caux* v. *Eden*, Doug. Rep., p. 602: "That when the admiralty has "jurisdiction of the original matter, it ought to have juris- "diction of everything incidental."

Hence, the decisive question emerges—what was the principal matter or thing in this case of damage? What was the original, or, in the language of the scholastics, *efficient*, cause of the injury?

To this, there can be but one intelligible answer. In the contemplation of law as well as logic, the principal thing, the original cause, was the ship; or, rather, the ship in action, and performing a wrongful deed to the great damage of others.

The composition or chain of causes and effects is very simple, being constituted by only six links:

1. The ship, a maritime thing, and within the admiralty jurisdiction.

2. The inception of the fire, through the negligence of the master and crew, a maritime wrong, and also clearly within the jurisdiction.

3. The wharf, a maritime thing, and alike within the jurisdiction.

4. The communication of the fire to the wharf.

5. The communication of the fire to the packing-house.

6. The destruction of both the wharf and the packing-house.

Such was the *series implexa causarum*, in logical as in chronological order. And no man can hesitate an instant in declaring that the ship, or the tortious act of the ship, was "the original matter, the principal thing," the efficient cause, in the case of damage; and that the destruction which followed, in natural sequence, was the incident.

But if this be so, then, according to all the authorities, the whole case is one within the admiralty jurisdiction. The syllogism is faultless. The demonstration is complete.

This conclusion, too, is in harmony with all scientific theory. Because it is a universal law of positive philosophy, that every action in nature derives its specific character and denomination from the agent or principal cause, and not from the object or mere passive thing affected by the action. In a philosophical sense an action is a mere abstract idea, and, in the concrete, means nothing more than an agent acting in a particular manner. Thus we speak of human actions, the actions of animals, the action of electrical and chemical agents, solar action, the action of the wind, or the waves.

Then, if a tort be perpetrated by a maritime agent, through the instrumentality of a maritime thing, and in a maritime place, must not the tort itself be maritime? To

hold otherwise would not only render the law discordant with the beauty of scientific thought, but positively absurd to common apprehension.

Finally, under this head, it has been expressly determined by the Supreme Court of the Union, that it is sufficient for the agent or principal thing to be maritime, to bring the case within the jurisdiction of the admiralty, although the other thing concerned did not appertain to such jurisdiction.

Thus, in *Fretz* v. *Bull*, 12 Howard, p. 466, it was decided that the jurisdiction attached as against a steamer, by the fault of which a flatboat was sunk in the Mississippi river; and every lawyer knows that a flatboat, of itself, is not the subject of admiralty jurisdiction.

The principle has been extended by the Supreme Court to embrace the case of a vessel, under the control of the admiralty, which had received an injury from another, not the subject of such jurisdiction.

Thus, in *Jackson* v. *Steamer Magnolia*, 20 How., p. 305, Justice McLean said:

"It is true, the *Magnolia* was engaged in a commerce "strictly within the State; but this does not exonerate "her, as the trespass was on a vessel protected by the "admiralty law. Cases have frequently occurred on the "Ohio and Mississippi rivers, where steamboats, having run "down and sunk flatboats, were held responsible for the "injury in the admiralty. And if a steamer is liable, in "such cases, a remedy for an injury done to it cannot be "withheld in the same court."

Hence, it is clearly no bar to the jurisdiction that one of the things, connected with the transaction, was not at all maritime.

Second. Our next argument is drawn from a principle

very similar to the one just discussed—if not, indeed, identical with it. It is this: That in "mixed cases," arising partly on land and partly at sea, or upon "navigable waters," admiralty has jurisdiction.

2 Parsons on Maritime Law, p. 504;
Com. Dig. Admiralty, F. 5;
U. S. v. *Coombs*, 12 Pet., pp. 72, 76;
Plumer v. *Webb*, 4 Mas., pp. 383, 384.

But this is just such a case. The wrongful action of the maritime agent commenced upon "navigable water," and was continued to its consummation upon the shore.

Therefore, the admiralty has jurisdiction, even under the most rigorous rule of the English decisions.

Third. The same inference is powerfully supported by the analogy of prize cases, in which, even in England, "the "jurisdiction depends, not on locality, but on the subject "matter."

Brown's Admiralty, p. 205.

The reason of the striking difference between the respective jurisdictions of the prize and instance courts, in England, arose from the fact that, "the Judges of common law "never attempted to restrain the jurisdiction of the admiral-"ty prize court, as to the land; nor to control it by the "principle of locality."

Brown's Admiralty, pp. 208, 222.

And, perhaps, because it was not quite safe to hurl the thunders of prohibition in the face of dignitaries from whom an appeal lay—not to simple delegates—but to Lords Commissioners of the Privy Council.

Hence, the jurisdiction of the prize court was not, like that of the instance court, restricted to the high seas; but

embraced all captures made upon land, by the assistance of a naval force."

Lindo v. *Rodney*, Doug. Rep., p. 613;
2 Leach's Crown Cases, p. 1093.

And the same doctrine has been definitely settled in the United States.

Case of the *Emulous*, 1 Gallis, 574;
Maissonaire v. *Keating*, 2 Gallis, 325.

But the grant of admiralty jurisdiction, by our fundamental law, clothes the Federal tribunals, at the same time, with all the constitutional prerogatives of both prize and instance courts.

1 Kent's Comm., p. 354;
Glass v. *Sloop Betsy*, 3 Dallas, p. 6;
Penhallow v. *Doar*, *id.* p. 54.

Therefore, to confer systematic unity and beauty upon our common admiralty law, it is indispensible to include within the jurisdiction all injuries committed, through the instrumentality of ships, to wharves and houses situated upon the shore.

And this very conclusion has already been implicitly drawn by the Supreme Court, in the case of the *Genesee Chief*. Speaking of these lakes and navigable waters, TANEY, C. J., said:

"Hostile fleets have encountered on them, and prizes have "been made; and *every* reason which existed for the grant "of admiralty jurisdiction on the Atlantic seas, applies "with equal force to the lakes. There is an equal necessity "for the instance and the prize power of the admiralty "court to administer international law; and if the one can- "not be established, neither can the other."

12 Howard, p. 543.

Fourth. We obtain the same inference from the analogy

of those cases where minors have been enticed away from their homes on the shore, by the masters of vessels, and carried to sea; and in which libels in the admiralty have been sustained against the ship-owners.

Steele v. *Thatcher*, Ware's Rep., 91;
Sherwood v. *Hall*, 3 Sumner, p. 127;
Luscom v. *Osgood*, 7 L. Rep., p. 132;
The Platina, 21 L. Rep., p. 397.

Now, would it not be something both legally and logically monstrous to entertain jurisdiction for the wrong of a master in seducing a boy of fourteen from his home to the sea, and at the same time, to deny jurisdiction in a case where the negligence of master and mariners, in the actual performance of their functions, on shipboard, has destroyed property adjacent, on the shore, to the value of a hundred thousand dollars? How can you hope to vindicate the law from the charge of barbarism and inconsistency in the teeth of such anomalies?

Fifth. We are claiming no more, in this case, than belonged to the rightful sphere of the ancient admiralty, before the jealousy of the common law courts had curtailed its jurisdiction; which, in the language of the commissions to the admiralty judges, comprised "all injuries done upon "public rivers," and "upon the shores and banks adjoining them."

De Lovio v. *Boit*, 2 Gallis, p. 452 (n. s.);
Benedict's Admiralty, p. 29.

In the time of the Commonwealth, the jurisdiction included "all cases of prejudice to the banks of navigable "rivers," or to "the docks, wharves, quays," etc.

Benedict's Admiralty, p. 57.

While the jurisdiction of the Scottish admiral embraced "all marine, and even commercial causes."

Brown's Admiralty, p. 30.

Sixth. The jurisdiction of our colonial vice-admiralty courts was equally extensive, including "all trespasses and "injuries between owners of ships, and other persons," done "upon the shores of public rivers."

Benedict, p. 83;
2 Gallis, p. 471, *n.*

Seventh. The general maritime law of continental Europe regards only the character of the transaction, and therefore extends to all cases of service, contract, tort or accident, "relating to ships, shipping and marine com- "merce."

Benedict's Admiralty, p. 117.

Now, can any lawyer possibly conceive a reason why the jurisdiction of the American admiralty should not be equally broad and beneficial as these other systems of cultivated justice? No one needs tell me that we are bound in fetters, by the constitution, to the English rule. In admiralty law, one should never practically adopt the truthful line of HORACE:

"*Visam Britannos hospitibus feros.*"

If we break the constitution by departing from the English rule, we have already broken it into atoms. We broke it when we suffered the jurisdiction to penetrate into the body of a country. So we broke it when the limit of tide-water was discarded, with the sovereign arbitrament of the moon. And we broke it, again, when admiralty jurisdiction was applied to revenue cases:

1 Kent's Comm., p. 372, *et. seq.*;
N. J. Steam Nav. Co. v. *Merchants' Bank of Boston*, 6 Howard, p. 344;
The Vengeance, 3 Dallas, p. 297.

In short, if the English rule is the sole criterion of jurisdiction, being sanctioned by the constitution, then the courts have sinned against that sacred instrument almost from the first moment of its creation, so that one more offence can scarcely add even a grain to judicial guilt.

Eighth. The act of Congress of 1845, conferring admiralty jurisdiction over the lakes, etc., declares that "the district "courts shall possess jurisdiction in matters of contract and "tort, arising in, upon, or *concerning* steamboats and other "vessels," etc.

Cited in Benedict, p. 139, § 246.

It requires no elaborate argument to show that the present case falls directly within the definition of the statute. The logic is not more brief than it is thoroughly syllogistic, and may be stated as follows:

All cases or matters of tort *concerning* vessels are within the admiralty jurisdiction.—(*Act of Congress.*)

But this is a case or matter of tort *concerning* a vessel.—(*Evidence in the case.*)

Ergo, this case is within the admiralty jurisdiction.

Now, there is plainly no escape from this reasoning, unless you assail the truth of the major proposition; or in other words, deny the constitutionality of the act of Congress.

This, however, cannot be done; because that act has been ruled to be constitutional, again and again, by the court of final resort.

If it be objected that the rulings referred to were not upon the particular point now in discussion, I suggest two considerations in reply:

1. The rulings virtually included this point; because they rejected the English doctrine, and the earlier American cases—which alone could throw any doubt upon the question.

mon sense, or excused by the wisdom of judicial reason? If a railroad company commit an injury to a ship, the admiralty interposes a prompt remedy. But if the same ship, in the course of her voyage, commits an injury to a railroad company, the admiralty is wholly powerless for relief. What a strange contradiction! What a libel upon enlightened jurisprudence!

But, for the purposes of this case, we are willing to accept the test of locality; for, the vessel was certainly in a maritime place. She was afloat in "navigable water," and within the unquestioned jurisdiction of the admiralty court. She was moored within the jurisdiction. She was fastened to the wharf—as clearly a maritime thing. And there, and thus within the admiralty jurisdiction, she perpetrated the wrong of which we complain. The persons having charge of the ship were also maritime, and were on board. The master and crew were upon deck, or in their berths. How, then, can we be shut out from the jurisdiction by the bar of locality?

It is true that one of the things injured was not maritime, nor protected by the strong and swift arm of the admiralty; but what of that? For, as we have already seen, and as all the authorities hold, it is only necessary that one of the things concerned, the agent committing the wrong, or the object suffering it, should be maritime, or protected by the jurisdiction.

But even if the question were doubtful, considerations, as well of private utility as of public convenience, ought to turn the wavering scale in favor of the jurisdiction. The necessity of a power to administer justice speedily and surely, in such cases, is very great; and will become more urgent with the future incalculable expansion of trade and commerce on the Western lakes and rivers. Never, indeed, was there a case which called more truly

than this for the application of the ancient maxim: "*Boni "judicis est ampliare jurisdictionem.*" And "*jurisdictio,*" here is synonymous with "*justitia.*" The ultimate question is, will you be fettered in the freedom of your judicial action by a fiction of the barbarous ages, or yield to the force of a present reality? Will you follow the example of the most enlightened continental jurisprudence, and which is in harmony with the physical geography of this grand new world; or will you cling with servile submission to the petty precedents of that little isle which, to borrow the quotation of Judge WARE, may be fitly characterized, as to this subject, as "*penitus toto divisos orbe Britannos*"?

A. W. ARRINGTON,
For Appellants.

Supreme Court of the United States.

No. 100.—December Term, 1865.

ORAMEL S. HOUGH, CHARLES J. KERSHAW, and CHARLES H. SEVERNS, Appellants,

vs.

THE WESTERN TRANSPORTATION COMPANY.

In the Admiralty.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

MR. SPALDING for Appellee.

Jos. L. Pearson, printer, 511 Ninth street.

ORAMEL S. HOUGH ET AL., *Appellants*, vs. THE WESTERN TRANSPORTATION COMPANY.	In Admiralty. Appeal.

DEFENDANTS' BRIEF.

STATEMENT.

The Western Transportation Company is a corporate body, organized at Buffalo, under the laws of the state of New York, and engaged, mainly, in the business of commerce and navigation upon the upper lakes.

On the 17th day of October, 1856, the Propeller Falcon, owned exclusively by said company, and actually engaged in their business, had ascended the south branch of the Chicago river, at the city of Chicago, for the purpose of taking on board a portion of her cargo, then being shipped for Buffalo, to which port the Falcon was bound.

At Cragin's dock, something over three miles from the mouth of the river, she took on board three or four hundred barrels of beef and perhaps a lot of hides. She then commenced dropping down the river, stern foremost, as there was no convenient place for her to *wind*, and after proceeding about a mile, it being near night, and the weather very thick and foggy, the captain deemed it prudent to lie by until morning. He accordingly ran along side of the nearest dock, which proved to be the dock of Hough & Co., the libellants and appellants, and made fast for the night.

At about 10 o'clock, and after, as was supposed, all proper precautions had been taken against accidents, the

captain and crew of the propeller retired to rest, leaving one man, a watchman, on duty.

At two o'clock or thereabouts on the morning of the 18th of October, the watchman discovered, first from the smell and then from seeing a small flame in the hold near the furnace, that the vessel was on fire. He attempted to go down to the fire, but "missed his footing on the steps and fell down into the hold."

One of the firemen who was sleeping aft, on the main deck, was awakened by a dense smoke and believing the vessel to be on fire, proceeded to give the alarm to the officers and crew. The usual efforts were made to extinguish the fire, but without success, and in a very short space of time it became necessary to abandon the vessel, and she was utterly destroyed, together with the cargo then on board.

At the time the propeller went alongside the dock of Hough & Co., as aforesaid, the libellants were the reputed owners of sundry buildings: one of stone, three stories in height, and one of brick, two stories in height, standing back some sixty feet from the water's edge and used as packing houses for beef and pork. They had also a shed, built of wood, and one story in height, extending over the most of the dock. There was also a large amount of personal property, consisting of beef packed and unpacked, salt in barrels and in bulk, empty barrels, and all the implements and tools usually kept in and about a large beef and pork packing establishment. Soon after the fire was known to exist on board the propeller, the buildings on and near the dock, used by the libellants for packing purposes, were also discovered to be on fire. These buildings with their contents, estimated by libellants at one hundred thousand dollars as the total value, were also consumed.

Hough & Co., owners of the property, real and personal, burned on the land, filed their libel in the Court of Admiralty at Chicago, against the Western Transportation

Company, owners of the Falcon, November 13th, 1856 as for a tort *super-altum mare*, and asked the court to decree the payment of $100,000, by the owners of the Falcon, as the measure of damages sustained by them, the libellants, in the destruction of their property.

The district court, on the 27th November, 1858, dismissed the libel.—Record, page 118.

On appeal, the circuit court, July 20, 1863, affirmed the decree of the district court, and declared the libel dismissed "for want of jurisdiction."—Record, page 121.

JURISDICTION.

The claim made by the libellants is for damage done to property, real and personal, *situated upon the land*, through the negligence of the master and crew of a steam propeller, lying in "navigable water" at Chicago.

It is insisted by counsel for defendant, that the admiralty does not take cognizance of trespasses upon "lands and tenements;" and for an injury to persons, and to personal property, the act must be done *on the water*, in order to give a court of admiralty jurisdiction as for a "maritime tort."

2 Browne's Civil and Adm. Law, 110, 202.
Thomas vs. Lane, 2d Sumner's Rep., 9.
Steele vs. Thatcher, Ware's Rep., 93.
The Propeller Commerce, Black's Rep., 579.

In this last case, decided at December term, 1861, Mr. Justice Clifford, in pronouncing the judgment of the court, takes occasion to say: "Locality, by all the authorities, is 'the test, in cases of tort, by which to determine the ques-'tion, whether the wrongful act is one of admiralty cog-'nizance; and if it appears, as in cases of collision, depre-'dations upon property, illegal disposition of ships or sei-'zures for breaches of revenue laws, that it was committed 'on *navigable waters*, within the admiralty and maritime

'jurisdiction of the United States, then the case is one 'properly cognizable in the admiralty."

Vide, *passim*, 17 Howard, 399 and 477.

Again, it appears that the act must be *consummated* upon the water, in order to give the admiralty jurisdiction.

U. S. vs. Magill. 1 Wash. Cir. Court Rep., 463.
1 Leach, Crown Cases, 432.
2 Hale, Pleas of the Crown, 17.
1 Hawkins, P. C., Ch. 37, sec. 17.
United States vs. Davis, 2 Summer, 482.
Steele vs. Thatcher, Ware's Rep., 93.

THE WHARF

It is insisted by libellant's counsel, (brief, page 6.) that their wharf was burned by reason of the burning of the Falcon: and it is assumed that a wharf is so far forth "*a maritime thing*" as to constitute an injury received by it, from a sea-going vessel, a maritime tort. Nothing can be more preposterous, unless it be the proposition that the length of a ship's bow-sprit may oust the common law of jurisdiction, and give it to the admiralty "in the Golden Horn and in the Chicago river," where "her stem may float in the water," and her flying gib-boom break the windows of the houses in the city.—See brief of libellants, page 4.

The truth is there is no warrant for the doctrine that a wharf, dock, or pier is a *maritime thing*, unless it be the rule that allows a wharfinger to institute suit in the admiralty for his wharfage or dockage. But a merchant may do the same thing to recover storage for keeping the sails and rigging of a ship in his warehouse in the city, while undergoing repairs.

Does that constitute the store or warehouse a "maritime thing?"

See Benedict's Admiralty, sec. 283, and authorities there cited.

NEGLIGENCE.

The testimony is quite voluminous, but a careful perusal will fail to satisfy the impartial mind that the captain and crew of the Falcon were chargeable with culpable negligence.

The *onus* lies on those who bring a complaint against a vessel and who seek to be indemnified, of proving that the blame does attach upon her.

The "Bolina," 3 Notes of Cases, 208.

CONSENT OF THE WHARFINGER.

It is said by the counsel, Mr. Arrington, in his brief, on page 2, that our vessel "*was moored at a private wharf*, in 'the harbor of Chicago, *against the will of the wharf owner*, 'and in defiance of the earnest remonstrances made by 'his agent."

If the proof supports this allegation, which is made in the 6th article of the libel, then I submit that the libellants prove themselves out of court.

The suit is against the owners, who are not liable for a wanton trespass committed by the master of their vessel.

The Druid, 1 Wm. Robinson, 402.

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